William K. Bond.
Litchfield
Conn.
1812.

Lectures
on
Law.

delivered
by the
Hon.ble Tapping Reeve
and
James Gould Esq.
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Pleas and Pleadings

1st Lecture

Pleadings are defined to be the mutual alternating between the Plaintiff and Defendant in a Suit put into Legal form and set down in writing. All pleadings were in Criminal cases and now in writing, formerly they were oral = The Council delivered in his plea "viva voce" and then it was reduced to writing, concisely, by a Clerk or Prothonotary, as Criminal cases now are: hence they are frequently called in Norman French, "parol": thus it is spoken of the parol's demurring = In Great Britain from the time of William the Conqueror until the 36th Edw. 3d Pleadings were in the Norman French ~~[illegible]~~ language =

From the 36th Edw. 3d to Cromwell they were in Latin, and the records in English

4 Bl. 293
4. Dan. 1.

10 Coke 132
3 Bl. C. 295
" 398

Pleas and Pleadings

Introduction

3 Bl C 317
Saun 86
Vs 29.

at the Bar from this time till the 4th George 2d they were in Latin and by a Statute of that year, they were reduced to English, in which language they have ever since continued.

The English Reports were in Norman French, until the time of Charles II the pleadings were in that language though the greater part of them are now translated. All Pleadings in Civil actions in this Country as well as in England are required to be in writing. In strictness these Pleadings are nothing more than the

3 Tidd 159
4 Bac Abr 278.

setting forth upon the record, such facts as constitute the ground of the Plaintiffs demand or claim on one hand and of the Defendants defence or denial on the other. This is the precise definition of Pleadings.

Lord Mansfield has observed that the substantial rules of Pleadings are

Pleas and Pleading

Introduction

"founded in the Principal Bench and in the Barrister and Client Judgment & Litigation page it is the most honorable part of the profession - The great object of Pleading is to present the claim of the Plaintiff and the defence of the Defendant in such a manner as will most commodiously admit of an easy and impartial trial, so as to bring the claim and defence to the same issues and definite points. Without a System of Rules in Pleading there would be no uniformity in the administration of justice. Pleading is strictly a Syllogistic process. A very good Declaration as well as every good, Plea contains the elements of Syllogism. If the Plea or Declaration can not be reduced to a Syllogism, it is unexceptionably bad. A Declaration is not a Syllogism in form, but it is an abbreviated and strong

Lawy 2-3.

Pleading

Pleas and Demurrers

Introduction

they pulling down a Dwelling house
in forcible and violent manner
the Plaintiff is the Owner, the Defen-
dant is the major prohibitant
being who has forcibly entered my
land, I have a right by Law to recov-
er damages under prohibition: The
Defendant has forcibly entered on my
land, Wherefore I prohibit
him I have a right to recover damag-
es by Law: And the major prohi-
bition contains the legal principle
on which the Plaintiff founds his
claim: The minor one, contains the
fact, to which the legal principle is
to be applied in the particular case. &
the conclusion is and inference of Law
from the application of the principle
to the matter of fact stated. The
prohibitions then must all be admit-
ted if being denied: The Defendant
is at liberty to deny the legal princi-
ples

p. 29.

The Rules of Pleading

the facts contained in the Parties pro-
positions, or the Grounds and Reasons of Law
on which they rest. These Rules are to be
noticed. The first is to be noticed generally
by an issue in Law called a Demurrer, or by an averment of Fraudulent
Conveyance. The effect of a Demurrer
is to admit the existence of facts, to be true
as it particularly states, but to deny the
sufficiency of it in Law as declared of
the Pleader. The omission prohibited is
denied by and issue in fact, which may
be either a general or special issue: but
the special issue must be on something
that goes to the gist of the action: if both
prohibitory and admitted or not denied
which amounts to an admission, the
Defendant, can not afterwards be an
swered thereby, upon matter
and this must be pleaded by a special plea
in bar. He can not traverse the con
clusions, but he must negate by a spe
cial

Introduction

Pleas and Pleadings

Plea in bar as a release for instance The plea of a release, presupposes the original and [illegible] probability, to be correct, but avoids the conclusion by something new. This plea also must contain the elements of a good [illegible] of the ground. It is as follows. "If a child be [illegible] [illegible] being of the [illegible] his right to recover damages against [illegible] has accrued.* Here the plaintiff again would be at liberty to deny either of the three propositions. If he would deny the first he must demur because it raises the legal principles; if the second he will deny that he was [illegible]. If he deny neither he can avoid the conclusion only by new matter contained in a special replication. As if the release was obtained by fraud, he must state the facts, which in [illegible] of the general principles, of [illegible] might be presumed from the Declaration of the Plaintiff."

* vid. append. d.4. note B.

Pleas and Pleadings

1st Proviso Bona called Bona in Days of yore because it was high time to put an end to complaints & long & expensive suits but people will and contrivance contributed them to have it in writing hence it is called a Writ.

The first stage of a Suit in England is the Writ: this is a mandatory letter directed to the Sheriff and issued by proper authority to compel the attendance or bail the appearance of the Defendant. The Suit is regularly and formally commenced by the issuing of the Writ: but in Chancery it is not commenced until the filing of the Bill in Court which is analogous to a Petition in Chancery. Bill is considered as the original commencement of the Suit. It issues from the King's Bench and be served in any County throughout the Kingdom, and the without bail and by the

Gen. Prac. 1st Part — 1st stage of a Suit

Blackst. Com. Bk. 3. pg. 35

Stat. 13 Ed. 1 c. 31 — 3 Bl. Com. 278 — Bank. Ord. 7 Geo. 4 — Tidd. 197 — Ibid. 199 — Reeve's Eq. Ed. 93

2 Burr. 930 — Earth. 193 — Stra. 156. 178. — 1 Ventr. 28. — 8 Mod. 343

Note this is after the return of the Latitat.

Eq. Ca. Abr. 64. — Bacon on the Prac. of the Court of Chancery. 48 — 2 Atk. 323 — 2 Harr. 275 — 1 Ch. Ca. 22

Stage

Pleas and Pleading

Gen. Vin. Abrid.

[illegible] be backing there by a Magistrate, but served in England, it may be without backing. Vide Burrows's Speech for Justice Johnson on a Libel. A Writ from a Justice of the Peace in one County must be backed by another &c. before it can

1 Bl. 102.
222.

be served. The date of a Writ is often times fictitious and the date may

5 Co. 131.
Esp. 25.
Bul. N.P.
44

be discovered and the true time shewn to make a tender good, or to prevent the Statute of Limitations: so of a Writ in Chancery to prevent the Statute from being pleaded. In Connecticut the Writ and Declaration issue at the same time. In Strictness the Writ is the commencement of the Suit here as well as in England: but the commencement of the Suit here is as much the Declaration as the Writ. The Suit is not considered as commenced here to all intents and purposes until service has been made

upon

Clear case - Pleadings

where the Defendant - It has been decided by Lord Ellenborough and Lord Tenterden that the last mentioned Pleas of Non-performance the last mentioned Pleas are bad because they are not defensive and that it was good ground of demurrer and sustained. On pleading for a Defendant however the notice is commenced from the giving of the last Plea. The counsel of the Defendant must agree at the date of the last. Q. Pledgeing stage of the pleading is the Declaration a Bond? This contains a statement of the grounds upon which the Plaintiff bases his right or claim of recovery. The Writ is not a part of the Pleadings. There is hence no necessary alliteration between the parties. The words "Declaration" and "Bond" have been used as synonymous, but of late a distinction has been taken: if there are two or more Bonds or distinct statements in the case, each distinct statement is called a Bond. Pleas

Lord Ellenborough

1 East 186.

Declaration Bond

4 Bos. & P. 14 a b. 5 B. & C. 296.

Law of Pleading

Chit. 6th 3 Ed. 655

Plea and Demurrer

Ser. Plea
Declaration
Demurrer.

Fredington
pl. for C

Bl. Com. 8.
Ser. 8.
Com. 18.
Salk. 15
Raym. 318
note 6
Carver v.
Jeff. 219
x. Vide 2 Ch.
Prec. 4.

C.

Plea and Demurrer
Defendant and called the Declaration filed when there was but one Count the issue was joined upon. The Count in Declaration therefore, but an replication or rebutter of the original Writ. The Writ stating it was the Crown of the Crest and the Fortes but it does not mention the fact. The ship out of which the crown originated there was saved for the Declaration. The Lawyer answered with what is called an "Demurrer" in Connecticut. This is a claim entered in the Court in Law to begin for the reasons of giving that Court jurisdiction over matters purely Civil. This Court had no other jurisdiction originally than criminal, in which a fine was made to the King. But when once the Defendant is in the hands of the Court in the hands of the Marshal of the Court he may be charged with an offence

Plea and Pleading

personal civil actions: of real actions they have no cognizance in the county Court. The first case that they entertained a clerk claiming benefit of clergy was an action of Debt also. The first case of action given the Court jurisdiction over the person and then the Recital called the Plaintiff to declare against him in the personal civil action. The pleadings include the Count in the larger sense of the term. In the limited sense of the term they exclude the allegation which precedes the Count and they denote those allegations which the Defendant makes by way of defence to the action and those which the Plaintiff makes to justify his Declaration. The first stage of the pleading in the limited sense of the term is the Defendant's plea. The plea was the part of the Defendant and of the Demurrer. II. Dilatory Plea. III. Plea to the Action:

Lev. 1 Dun. Pre. 14. Cont.

4 Bac. 1-6. 3 Bl. C. 299

4 Bac. 1-6. 3. Bl. 299. 301. 4.

4 Bac. 6. 3 Bl. C. 301

Clerks and Pleadings

Continued

1 Dilatory Pleas. Once and such
have to delay the action by questioning
the mode in which it is brought the
time for pleading the answer
right of the defendant. To plead the
[illegible] [illegible] to a bad
and in abatement is to deny to a
[illegible] bad & consequently bad and De-
laying it then & not effect the right to
the [illegible]. The first stage of the Defen-
ant's plea consists of a Demurrer or
[illegible] [illegible] [illegible] [illegible] [illegible]
to three kinds: 1st Plea to the Juris-
diction: 2d Plea to the Disability of
the Plaintiff: 3d Plea in Abatement.

4 Ga. 2d. The two first stages of the proceeding
are so distinct as very often to
Plea. Pleas. Pleas often comprehend the
[illegible] of Dilatory Pleas: A different di-
vision is made by other writers: Pleas
question the jurisdiction of the Court
[illegible] [illegible] all kinds of Dilatory
Pleas.

Plea to the jurisdiction and often called Plea in abatement, Pleas are plea to the jurisdiction & matter in abate ment has been considered as a good plea based upon the doctrine of protecting plea: but the law is clearly in another. The form of this is restricted form any of the Courts but it is not necessary to add a plea to the jurisdiction on to the ability of the Plaintiff, this is an abatement

Illinois Pleadings

III. Plea to the action. If such be matter in a person to the merits of the Plaintiff's complaint and denies the Plaintiff's cause of action (which often form of pleas in Bar) & the to the action may stop the Plaintiff right to recovery in the cause of action. Bar

Bar & Plaintiff's alleged. 2d. Of replying and avoiding the Plaintiff's alleged. Lawes 37. 8 105. 120. 126.

Matter of Estoppel: this serves the Plaintiff right to avoid the

the

Per Curiam

Pleas and Pleadings

[illegible]

[illegible]

[illegible]

Pleas and Pleadings

It has been objected with effect to the action: that it is not competent to be a plea to the action for a Defendant to be able to avoid any other part of the Pleadings with the Declaration and contain a plea to any thing and object to a plea to the action. Let Defendant should in a mode of regaining the Plaintiff's right to recover but not in mode of reducing it. Key for a General and view of Pleading

In the Pleadings two things are necessary: 1st the Sufficiency of the Pleadings to be sufficient: in other words the Facts alleged must be sufficient. It is very important. 2d the matter in Pleading must be declared and arranged according to the forms of Pleas of action of Trespass and omitted the Pleadings are bad: if the former they are bad in substance, if the latter they are bad in form: Short and different ways

Per Cowley

4 Bac. 104 1 Saund 40 5 Mod 182.

Mod 103 3 Mod 182 4 Bac 104

Rule applicable to Pleadings generally

Practice

Hob. 2 Hob. 164 Cyc. 683 Lawes 45.

But the

Pleas and Pleadings

General Rules.

ing of taking advantage of these in-
sufficiencies. Where are both the grounds of
Demurrer. [illegible] the [illegible]
grounds of [illegible] then [illegible] the [illegible]
of Special Demurrer. In the Pleading
it is necessary to state only facts and the
[illegible] though the English is [illegible] known
but it is necessary to state con-
clusions from facts. Particular laws
and Customs are pleaded when the
Court cannot officially take notice
of them: but the Courts take notice
of the General Law: [illegible] by
laws which are pleaded and become
exceptions to the General rule. There
a conclusion from a fact is a conclusion
from a fact stated in the Declara-
tion: [illegible] a substantive [illegible]
[illegible] fact itself but it is inferred from
a fact expressed in the Declaration
This is a Conclusion facti de facto.
The other general rule in all Plea-
ding

Comb. 150.
Same 25

[illegible] 60.
[illegible]

[illegible]
Same [illegible]

[illegible]

that every plea should be direct and not argumentative, nor by way of recital.* The averment of every thing material must be positive. And this general rule requires that things [illegible] material [illegible] recitation of the averment [illegible] not be stated directly. [illegible] no fact how ever unimportant it may be should be alleged by way of positive averment if it can not be distinctly traversed by the rules of pleading. By the rule above mentioned is meant that the party pleading should state the principle fact itself direct and in positive terms. [illegible] he can not [illegible] "whereas" but he must aver it directly and precisely. Thus, if in an action for assault and battery the declaration [illegible] that "whereas" it would be ill, for the general issue would be absurd. viz "whereas he did not &c", and the [illegible] cannot

[illegible]

General Rules.

[illegible]

* 1 Chit. 227.
97.
Lawes 75–6.
31–2–4
1 Saund. [illegible]
Co. L. 303.
Plowd. 128.
[illegible] 223.
7 T.R. 437.

Lawes 98.
[illegible]
7 T.R. 458.
[illegible]
[illegible] 46
13 [illegible] 34
1 Chit. [illegible]
[illegible]

Pleas and Pleadings

Special Pleas

[illegible]

[illegible]

[illegible]

Plea and Pleadings

General Rules.

necessary for the Plaintiff to prove, consideration, they are the evidence of the promise. So also in a note of hand, he only describes the instrument which is merely the evidence of the promise. The Declaration then is good and has been so held by our Courts, in a Writ of Error. The Counsel state positively that "a mere promise is Trover, not Conversion, which is the gist of the action, if alleged, the Declaration would be bad for demand and refusal are only evidence of a Conversion: they are not Conversion itself. Suppose that one states in his Declaration that John Doe owes truly that the Defendant did promise to pay the Plaintiff at such a time such a sum of money, this is evidence, but not necessary, the Debt is the gist of principle: for the act of John Doe is stated which is

Co. Lac. 389
2 Roll. 93
1 Saund. 274 note

the

Pleading

General Rules

[illegible]

[illegible] 82.

[illegible] 82.

[illegible] 82.

Plea and Pleading

General Rules.

to allege the time and place: "Some time" must always be stated, yet he is not bound to prove the time laid, except where otherwise it would work a Contradiction: but if the act is done within the time laid it suffices [illegible] 1 Salk. 65. Ry. 65. 3 Lev. 346. Stra. 68. 2 Ch. Rep. 206. Cal. 220.

[illegible] the act may be proved to have been done before the action was brought, and it proved the act may be proved any time before the action was brought. Transitory actions [illegible] place is not to be stated, the [illegible] exception to all the strict rules of the Common Law, the action must be brought in that county where the action arises. But as the Common Law is varied from by fictions continually: by mere power: and it strictly holds to no Contract written or Bond executed abroad [illegible] in England, [illegible] [illegible] a bond given in New York

Court [illegible]

1 Str. 636. Ry. [illegible] [illegible] Law. 84. 5 T. 58.

22\. General Rules

Salk. 15

6th. 69

Bul. N. P. 89

[illegible] Pleading

[illegible] in England, their state [illegible] the United States [illegible] the [illegible] back [illegible] action brought to recover personal chattels, or for injuries done to them [illegible] that it is [illegible] that the [illegible] quantity and price of the [illegible] be stated but it is never necessary to state the truth in these particulars, except [illegible] whether [illegible] them [illegible] work [illegible] in try [illegible] the [illegible] that the Defendant took a [illegible] number of things, and if he can prove that he took but one he will recover. These are regularly but matters of form except where a variance would be made: thus if the Plaintiff should declare that the Defendant made a promissory note in which he bound himself to pay 100 £

where

Pleas and Pleadings

General Rules.

Pawl. 69
" 69

also be really more burdensome to parties than £90 £ this mistake would be fatal. The time of a contract ought to be alleged exactly as it was and from the body there is no matter of variance. Another general rule is that *surplusage* may be rejected in the pleadings; *illegal* surplusage would vitiate if it were of the time but still superfluous in a material point will vitiate an plea.* By *Surplusage* is meant words in a declaration or in other words it is when a party having alleged sufficient for his case proceeds to allege something more foreign to his plea. Thus if the party states things which are good nor bad they can not impair the plea. *Repugnancy* is self contradiction in the pleadings and consists of two or more accounts of the party being inconsistent with each other. If he said in one place that a

Dan. 375
Bac. Ab. 170
Co. Lit. 377
303
Dyer 305

* Ex of indict. and Pleading.

4 Co. 96
Co. Lit. 288
" 289
4 Bac. Ab. 99
Salk. 658
" 658
Pl. 50
Gilb. Evid. 100
Plowden 85 a

way

Legal Effect

Plea, and Pleading

[illegible] be pleaded according to its legal operation and not as the case may be the direct matter of [illegible] the deed. This rule that if one joint tenant should release to another, it must be pleaded as a release, not as a feoffment, [illegible] joint tenant can [illegible] feoffment. So if a grant is made by a tenant for life & the tenant [illegible] it must be pleaded as a Surrender because it can not exist as a Grant. So if one should covenant, [illegible] to pay [illegible] the proper mode of pleading it is as a [illegible] or Breach of a Covenant. The rule [illegible] in Bellamy & Rokstone 4 to 11 [illegible] decided by Justices Wilmot & Nares. It must be pleaded as a direct matter of fact or according to its legal operation though the above is the most professional way of pleading.

Comp. 279. Doug. 654. 17 Keb. Int. Co. Litt. 258. 1 Co. Rep. 174 b. 4 Bac. Abr. 2 to. Co. Litt. 1 Ea. 240.

Plea and Pleading

General Rules.
Hard. 81
7 Coke 64
1 Ins. 303 b
9 Co. 57 a. b.
[illegible] 10
11 Co. [illegible]
2 Roll. [illegible]
[illegible] 8
Plead. 65–81.
[illegible] 367
2 [illegible] 24
Lawes 48.
[illegible] 47.

That which appears on the record need not be proved. The matter here as alleged, for [illegible] shall be proved to the jury, either [illegible] [illegible]. The necessary circumstances implied in the first [illegible] need not be [illegible] [illegible] averment [illegible] not [illegible] [illegible] [illegible] of [illegible] the [illegible] need not be [illegible] [illegible] of [illegible] [illegible] evidence of the existence it must be averred specially. Thus in pleading a performance it is not necessary to aver that [illegible] [illegible] [illegible] the [illegible] [illegible] for the word "performance" ex vi termini implies it. Some say it is ill on Demurrer but Gould thinks not.

Lawes

7 Co. 4
Plead. 65
61
Lawes 48.
1 Chit. 305 b.

What is admitted between the parties can not be contradicted even by a jury. Neither of the parties can be tried [illegible] he has once pleaded though the Court may permit him to [illegible]

4 Bac. [illegible]
2. Mod. 5
B. N. P. 289
Lawes. 48.

[illegible]

[illegible]

[illegible]

William Ellis
Litchfield
Con. school
Sept. 20th 1811

General Rules

of these cases by retainer = Indictment allegations need not be narrow: such as a description of the person clothes, as a white Hat &c. If the Declaration the plea or any other pleading in either part want in substance or form or in truth the circumstances of time place &c. is wrong by the [illegible] the [illegible] should be special or demurrer. Why if the fault is Duplicity, the Defendant plead the General Issue: the Defendant can not take advantage of the Duplicity: So [illegible] a plea, a record or deed and [illegible] to take a present [illegible] the [illegible] party plead over instead of demurring the fault is aided: formal Defects and generally they aid: [illegible] principle on which it depends [illegible] advantage of it [illegible] he is supposed to have waived

* Sense if there is a want of substance =

8 Co. 120 a. 1 Lev. 95 1 Ph. 395 Gilb. 55 Gilb. 55 2 Vent. 222 3 Lev. 311.

General Rule.

[illegible] 15

[illegible] his claim: If the plaintiff [illegible] [illegible] [illegible]

Pleadings and Pleading.

General Rules.

establishing form & leave to the Pleader upon to further reply. There are three ways of meeting new matter: 1st By denying it: 2d By confessing and avoiding it: 3. By demurring to it. If the Pleadings are closed, new matter cannot be offered because when the party advances new matter he can not maintain an issue and compel the other party to join him in it. In Estate in fee simple, may be pleaded or alleged generally: the party is not bound to show the end of an estate in this Estate but in pleading any particular Estate, the party is bound to show the commencement: he must plead it specially. The reason is found in 3 Milton 19.

Each of the by commencement has a division of Pleadings in these three ways mentioned above by 1st Denying by confessing and avoiding and by demurring. This may be made till a

Rep. 3d. 3 M.C.L. 310

Rep. 3d. 1 Bac. 7th

Rep. 3d. Comy. 4th

Pleas and Pleadings

General Rule.

issue there is tendered and then the other party must join. If then the Defendant pleads in bar, the Plaintiff may pursue either of the above methods or he may unite the three, denying some, confessing and avoiding and demurring to the remainder. The other plea must [illegible] conclude with a verification under [illegible] the pleadings. The first plea is the Declaration of the Plaintiff. 2. The Defendant answers as a plea in bar. 3. Replication of the Plaintiff. 4. Rejoinder of the Defendant. 5. Surrejoinder of the Plaintiff. 6. Rebutter of the Defendant and 7. Surrebutter of the Plaintiff. In special pleading and [illegible] further the names [illegible]. In every successive stage of pleading the pleader must [illegible] that what he has before laid down in his own plea: The plea in bar is to destroy the Declaration, the [illegible] of the [illegible]

1 Saund. 131.
3 Bl. C. 310
311
Lawes 58
[illegible] 132
138

[illegible] }
[illegible] }
2 Bac. [illegible]
[illegible]

2 Th. Bl. [illegible]
[illegible]
[illegible]
[illegible]
4 Bac. [illegible]
1 [illegible]
[illegible]
[illegible]
[illegible]
Lawes 30
126
Ray. 92.

is

Plea and Pleadings

General Rule.

is to answer the plea in bar, and so on through all the pleadings. The judgment given by the Court is always pronounced upon the whole record whole, so that he, who on the face of the whole record taken together appears entitled into judgment will have it. The Court are to give judgment upon the first substantial defect in the pleadings. Then if the Declaration be bad and the plea in bar bad, and the Plaintiff should demur to the plea in bar, as long the Court would look back to the Declaration and find there the first error. The bad plea is good enough for the Defendant need not have made any answer. This rule prevails in a pleading through every stage of the pleadings.

Cro. Eliz. 110. Cro. Car. 200. 199. Co. Litt. 171. 1 Saund. 285. 8 Co. 120. 1 Ld. Raym. 338. 4 Bac. Ab. 31. ~~Plea~~ Tit.

a bad declaration.

Declaration.

Vide Appendix H.

This being the foundation of the suit it must show always all that is essential to the Plaintiff's right of action, because the Plaintiff can not be permitted to

4 Bac. Ab. 6. 1. Lawes. 68. Co. Lit. 17. a. 11 Mod. 44. Cro. Car. 199.

Plea of Set off that he

to prove any material fact which is not alleged in his Declaration. Each party's fact must be accordingly what he has alleged. If the Declaration omits any material fact the defendant, on a plea in the Declaration, denies any fact affirmative by which it appears that the Plaintiff has no cause of action he can not have judgment even though the Declaration be otherwise sufficient. So in Debt on bond the Plaintiff gives the day of payment and it appears that the original writ was sued before that time has arrived here there can be no recovery. Even particularly where it appears by the Plaintiff's own showing that he has no cause of action as to part of what he claims he can not recover for that part. So if he alleges two distinct breaches in covenant broken, and it appears that there can be no recovery there there will be no recovery in that

Robinson vs Blood 4 Conn. 399
Ib. Bed 1344
Ib. Ec 325.
Mooney 548.
Ib. Dec 1274.
1 Conn 285-6
N. Ea. 40.

case.

Plea and Pleadings Declar.

It seems to be settled however that if one
bound by Contract to another, dies,
himself before the time of performance
arrives, his power to sue, and an action
sustained before that time arrives, they if
an account, be cast off. at the end of
six months, and at the end of three months 3 Bac. 2
he actually cast off. C. had C. may sue
at immediately the 1st Fund begins
not declared in principle for a weight
reputation at before the time arrives,
From the above-pile, you will perceive
that the consideration of any thing which is
off the end of the action, is not incumbent
at it. the gist of the action is the grounds
or foundation of it: by that without 4. Bac. 8.
which there can be no recovery or that 3 Inc. 95.
without which the Plaintiff could not Dany. 678.
have judgment. Thus in Trover Conver- 3 Ch. 3.
sion is the gist of the action: this, the 1 Ch. 1.
only wrong complained of: he Chosen 2 Ch. 24
taking from possession is the gist. II.

Declaration — Plea and Pleading

In the Law of pleading pretends generally must with the same strictness and regularity. By endeavouring to account matter introductory to the principle parties by a good claim it. By appearance it must necessarily at one instance [illegible] the same [illegible] [illegible] [illegible] to [illegible] and not to [illegible].

Cam. Lib. 90. 60.

Applicable Rules: The [illegible] certain certainty: in the allegations on the [illegible], [illegible] be [illegible] clearly intelligible. Different [illegible] of certainty are required in different kinds of pleas: the quality of certainty relative to the description of the [illegible] lines and [illegible] and to the subject matter of the suit itself: and these things must be clearly considered as [illegible] a negative [illegible] [illegible] and that the adverse party [illegible]

5 Cam. 29.
6 Cam. 3.
Cro. 2. 305.
Cro. 2. 18.
5 Cro. 15.
2 Cro. 32.
Cro. 2. 350.
Cro. 2. 350.
Cro. 2. 350.
Cro. 2. 350.

and

Pleas and Pleadings

Declar.

how and what to answer to, and also that the Court may know what judgment to give* & the matter of Indicatment and Appropriation, the certainty is necessary, than in the point of the action for they are not Traverse, and therefore can not be put in issue, and if it is not necessary that the Defendant should know what to answer to. This Doctrine of certainty will be explained more fully hereafter. It may be observed that the words said aforesaid &c are never sufficiently certain where there is more than one antecedent to which they may refer, & Declarations may be ill in part for uncertainty and good for the remainder. When the Declaration is faulty a Advantage is to be taken by Demurrer or motion in arrest of Judgment if at all than the Court may and and cannot officio & motion it: it can not (regularly) be pleaded in abatement: for it implies ob: against the Decla. Contra by

* and that ye Defdt may be enabled to plead ye Judg. to any Recovery for the same thing.

Comb. 683.
1 Vents 270
1 Ord. 8
1 Ins. 303
Plowd. 84
Co. 28
Co. 26
Co. 94
5 Co. 30

2 Roll. 8.
2 Lain 26.
1 Roll Rep 258

1 Salk. 218.
Cont Dyer
Plowd. 6. 52.
2 Saund 79
2 Lev. 56.
1 Saund. 326.

Declar.

Plea and Pleadings

Cro. J. 8 Salt. 214 200 Cro. Eliz. 78 Yelv. 176 Sayer 176 Lord Raym. 1

is to be pleaded by a plea in abatement because it must appear on the face of the Declaration: So also where the Declaration does not comply it must be remedied by abatement = A Contract which at Common Law is not good, without being in writing, must be declared upon as written. So also a Contract unknown to the Common Law but created by Statute and required to be written must be so declared upon but where a Contract not required by Common Law to be written is by Statute required to be written it needs not be declared upon as written.

Dyer 64.

A Plaintiff in declaring upon a Deed is not bound to set forth every point fit, but is sufficient to entitle him to recover = The Deed may contain many covenants of which only one be breach: Now the Plaintiff need only state the breach. Also no of the Deed should contain a proviso which would defeat

him

him he need not state it, but if it is in the body of the deed, or if it is a condition precedent, he must state it. If from the facts stated, the Law will raise a promise, still the promise must be laid in the Declaration, except in the case of promissory notes and Bills of Exchange. A Declaration may be either general or special: in one case the statement of the cause of action is more general than in the other. So in indebitatus assumpsit for money had and received, he may state it generally as he may plead to the Defendant received money for his use.

Of the counts of parties in the Declaration

1. Counts of the Declaration. It is a general rule that where a man and woman jointly interested in any right they must and ought to join in maintaining the violation of that right and the rules whether the action sounds in tort

Ch. Pl. 156
Tidd 426
Lawes 69
Mod Pr. 58.
2 Roll 74
"Quare" "that in mort" "for mortgage" &c.

1 Bac. 8

4th Declaration

1 Bac. 530
3 Bac. 606
Thes. 156
" 158
3 Term 651
3 Bac. 606
Sec. Rule
1 Saund. 291 n.
1 Com. Dig.
Dower D. 12.
Al. Lem. 12.
Ca. Lem. 5.

Minutes of Proceedings

Minutes of Proceedings

or Contract, or in the case of fraudulent preferences &c. So fraudulent conveyances in the nature of Trusts in the case of Creditors in their proper Courts. So the Court when the right violated, should in certain cases allow an individual to assert his claim. It would prove well another why right is not violated, there can be no recovery. K. Thus called a Majority. But the right to join that who ought to have been joined is called a Non joinder. Upon these rules it appears that all the Creditors and State ought to join as being but the Representatives of one mass. There is a greater unity between creditors than between Copartners: they must be joined whether answer upon oath or not. If one refuse to act he must be joined. But the non joinder of Creditors is a Defense. Third exception to the rule where persons are joint owners. Suppose two men

Pleas.

Joinder of Parties in the Plea.

are slandered at the same time by the same words, here they cannot join to recover the injury done to me is no injury to the other: here the rights are separate and distinct: no joint right is violated: so also in a joint Act if two persons should be beaten by the command of persons still the persons beaten, can't join in an action of Battery, though could now have the separate action. But the other hand Lord Coke says the true rule to be as to the Joinder of Defendant that when the cause of action arises out of the joint Act of two or more they may be joined, and in Contracts they must be joined as Defendants: but where the cause of action does not arise from the joint act of two or more they cannot be joined, hence they cannot be joined in actions for rebutting the same person at the same time: I. C. Part of two joins in publishing a libel they may then

Paine Bull. N.P. 5. 2 Mod. 104 Co. Rep. 87b. 2 Saund. 116.

Cit. Ch. 200 Salm. 390 1 Saund. 5. 2 Com. 485 Bac. Ab. Co. Joint 1.

Clear and Strong

then be joined, for the act is joint. If two or more persons commit a joint tort they must be joined and sued together and so if they make a joint promise or pledge, as here in case of Contract they must be joined: but if two or more join in committing a trespass they may or they may not be joined: etc or two or more joint must be joined a Defendants in the action: So in malicious prosecution: Proceeding to enquiring law, you will perceive that two persons can not be sued for Distinct act, of tort committed severally if there are two or more joint obligees, Covenantees or Promisees, and one of them dies the Executor of the deceased must join with the Survivor in suing on that Contract: "Two or more under hand and seal, and the right to sue survives to the Survivor alone, but to some account to the Executor: he trustee for him:

Rus. & B. 5. Mod. 6. 4 Bac. 13 Saund. 208 2 Bac. 985.

4 Bac. 13. Shep. 55.

Pleas and Pleading

So also, as the last Defendant has the right to sue, it belongs to his Executor or Administrator, and he must account to the other Executors. As to Contracts of two or more persons made a joint Contract they must all be joined in an action brought on the Contract: But if the persons have bound either or all, and be sued yet more than one are left that all are not liable to be sued because but one of them need not be considered as other joint or Several. If two or more persons have bound by one Contract the Contract is joint of course, unless the terms of it imply a Several obligation or duty. In the phrase of implying the same as and jointly promise. Promise jointly and Severally will constitute a joint and Several Contract: Also if two persons are bound in a joint Contract and one of them dies his Executor or heirs are to be sued with the survivor.

1 Ped. 497
1 Ver. 160
Cro. Eliz.

3 Ped. 679
Sal. 395
2 Vent. 29

3 Ped. 658
Hob. 96
Sid. 98
3 Mod. 182

3 Ped. 60
Cowp. 37
Str. 1270
Bailey 13

Tenants

parties in the action. If there are several Executors, an action ought to be brought against them, it cannot be brought only against those who have consented to act, who have accepted the rule in offered when upon Plaintiff's bond. The form of joinder was in joined jointly of course of action in one declaration, between the same parties. The Rule is that several one per between the same parties may be joined in the same Declaration, if they are of the same nature, but they is a Singular Rule. By course of nature of the same nature, or one and both of a similar nature. This rule is the exception. What is meant by course of action of the same nature has been said to be courses which require the same judgment at Common Law. These are cases to be within the rule

Cunnell v. Smith 1 Str. 161 & Hob. 87 Cro. Eliz. 151 Cro. Jac. 147

Cunnell v. Smith Hob. 87 Cro. Eliz. 151 Cro. Jac. 147 Bac. Abr. Joinder of Actions

Cro. Eliz. 4 Cro. Jac. 147 5 Bac. Abr. 1 Salk. 346 2 Bul. 319 Cro. Eliz. 152 Cro. Jac. 147

and

Pleas and Pleadings

are merely to join issue in a general
though not an universal rule: they
Debt on bond, and a Debt on bond may
be joined in the same Declaration and
being two Counts, and accordingly the
Pleas to the General Issues are different. Also
Debt on judgment, on bond and on simple
Contract, may not be joined in the
same Declaration being dissimilar -
though the General Issues would be different
in all: The General Issue to Debt on bond
would be "Non est factum" - to Debt
on judgment "Nul tiel record": and on
Debt "Nil Debet" Pleas in all of these
cases the Judgment at Common Law
would be the same: it is universally
true that where General Pleas require
the Judgment at Comm. Law of
the same Nature they may be
joined: they too may be used on
in one Declaration. But Pleas requiring
no Judgment it has been questioned in

Cro Eli. 20
1 Ven. 366
1 Mod. 275
1 Ord 250

1 Mod. 245
Mill 201

* [illegible]
have other
[illegible]

power

Case Law

[illegible] and [illegible] of the political [illegible] can be [illegible] with a [illegible] for [illegible] and [illegible] the [illegible] be [illegible] [illegible] to [illegible] them. They are both [illegible] and [illegible] the [illegible] [illegible] [illegible] either [illegible] or [illegible]

Elections

Elections [illegible] concerned with [illegible] [illegible] in [illegible] in the [illegible] Parliament. The [illegible] of the [illegible] [illegible] Case Law: [illegible] political [illegible] and the [illegible] [illegible] [illegible] Declaration: [illegible] against the [illegible] [illegible] [illegible] Slander and [illegible] [illegible] by the [illegible] [illegible] the House and also the [illegible] of the House. [illegible] [illegible] [illegible] There are [illegible] of [illegible] in which at Case Law the [illegible] and [illegible] and the [illegible] [illegible] [illegible] they may always be [illegible] [illegible]

[illegible]

many ways between the assent of the
Barons and the Commons from different
the most to prove: as Pell and Petit
have: Petit in a long and Pell in a long
have the first assent of the barons the second
and first of Commons. So necessarily
all in Commons may be joined to and
Declaration, though Pell doubtful
giving no and of the Lords: nor is
any objection to joined Pell and
Petit: But I leave point that
consent of action of the Commons mentioned
may be given by to be considered and
they all accord and are said and in the
Commons right. For consent of action though
of the Lords hitherto it they do not accord
in the Commons yet may not be said for
consent: Therefore Commons consent given
in a Declaration, a Commons money
had and received on his and accounts
and Commons here are two distinct
authority - the latter was the only

for

Pell
Petit
Pell
Petit

The consent and given
Commons here may
be only in
Commons Particular
consent

Salk. 13 1 Mod. 27 2 Show. 58. 4 Mod. 70 3 Lev. 100 1 Ventr. 237 1 Saund. 195

a Defendant takes leave to plead and says that the Plaintiff ought not to maintain his action against him because he was a Bankrupt before the time of the cause of action arose, and he pleads his certificate of Bankruptcy in bar.

What cases of Bankruptcy may not be pleaded

If Trespass and Battery were committed before the Bankruptcy the Bankrupt may plead it.

Salk. 4 1 Saund. 60

Trespass and Trespass on the case arising by tortious taking goods and trover for converting them can not be joined. But Trespass and Trespass on the case arising by contract may be joined: Trespass and Ejectment can not be joined. Nor Trespass and Declaring prosecution. Nor Trespass and Trespass accompanied with trover. The other have without fences. The former may differ from the former by a Battery in the latter

(in the first case the Defendant takes a Bankrupt)

R. 16 Hob. 134 2 Wms. 301. 2 Burr. 1114 2 Lev. 189 1 Roll. 80

Trover and Trespass

Latter Philipicorum: Trespass or Trover
to cannot be joined with a Count sounding in Contract. Trover and Trespass
also cannot be joined in a Count
sounding in Tort committed with or
without force, nor with a Count sounding
in Contract: Nor can Debt and
Account be joined,* the Ties, Judgment in
the Same and they are both founded in
Contract: Nor can an action of Ac-
count be joined with any other action
because of the peculiarity of the proceed-
ings in every action of account
there must be regularly two Judgments
1st Quod computet: and then the Accou-
ntee is to be adjusted by Auditors: 2d Final
Judgment is rendered on the report of
the Auditors.

Recapitulation: 1st When the Judg-
ments and Pennal Issued both the
Causes they may universally be joined
in one Declaration, in different County:

Mod. 366
2 Ld
Th. P. 235
Mod. 319
2 Bun. 1114
Carth. 139
Ge. Rep. 38

* Because the Judgments are different

Tidd 81
Cit. Court
Thomas

Judgment on an invalid plea

In pleading, consider the general form & effect they may be found of judgment & the same. They must be treated separately.

Pleas generally

Pleas are either dilatory or peremptory

Dilatory pleas are to effect a postponement when the judgment and the general form are different they always can be found. Pleas are the only peremptory pleas on this subject. It is the effect of preventing nothing, it be allowed that a Bar is considered in good order of concurrence or matter in answer of judgment. It is an irrevocable fact. A Bar is considered of actions totally distinct from what is called a plea. By a Bar is intended the pleading of matters in the same declaration, which by law cannot be joined. Duplicity is a defect in form: it not a material defect. In case of a bar in issue there could be no judgment ~~[illegible]~~ be entered. One fully relevant answer for the Bar is

Bar is considered in good order

Bar is considered only by the plaintiff in the same

enough

Plea non Cladiceq

and third counts but not. When it is
made that certain causes of action
can not be joined there is a material
distinction to be observed between of
fence causes of action and mere
matter of aggravation. Thus trespass in
breaking a close and beating a Ser-
vant is good in an action Quare clau-
sum fregit: the beating is a matter of
aggravation to all and trespass. There
are cases to a cause of action of the Defen-
dant can justify the breaking: he is in
that action completely acquitted: A
Plaintiff is never obliged by law to join
his actions though of the same kind: thus
if a person has two notes he may bring
two actions and but the Court pre-
ventively compel a consolidation of
them. Costs in this case will be taxed on
the footing: by agreement with the
Court, and if there is a diversity of
reference they will not grant a consolida-
tion.

6 East 388.
3 Mod. 231
Burr. 1113
1 Ld. Raym. 197
Salk. 647.

8 Mod. 1617
2 Ld. Raym. 1360
Stra. 61
2 Saund. 96
Ch. Barn. 7 Anne 88.

Salk. 3
1 Ld. Raym. 1
8 Stra. 1149
Burr. 1118
Bac. Ab.
Ch. Barn. 7 Anne 90

[illegible]

[illegible]

[illegible]

Plea and Demurrer

But when his rights & remedies are made
dependent upon Contracts in subsequent he is not
bound to allege it the Defendant must
state it by way of Defence:

7 Bac. 5
1 Ld. Ray. 538
4 Ta. 60
2 Ld. Ray. 951
2 Ld. Ray. 1574
1 Str. 574
4 Term

If there are peculiarly Circumstances
which ought to be taken into consideration
under the performance on the Defendant's
part & Difficulties on the Plaintiff's, e.g.
of Business, they should be counted
matters for pleading & relieving. Mayor:
Corp. of Oxford in the 10th Rep. Report
stating the Delivery of the Stock, because
the Process was the Consideration that
if he pursuing it paid Interest by the Action
the Mayor should never have Relief:
It was offered on the Contrary that
Action of the same kind must be
considered if the Bond and also that
Costs must be paid the Defendant up
to the time of Commencement: But
Lord Ch. Hardwicke gives that this point has
been determined contrary: it is that the
Plaintiff

1 Ch. Ca. 64
Cro. Car. 64
3 Bac. 10
Cro. Jac. 58
Cro. Car. 350
Cro. Car. 580
2 Mod. 209
2 Mod. 104
2 Lev. 240 to 6

1 Bac. 203

6 Rep. 10

Cro. Jac.

Clerk and Clerkship

Plaintiff's lands purchased by the
Defendant's grandfather.

A Declaration is filed on Land out
of which the Defendant claims a General Remainder
in Tail, the Defendant will be com-
pelled, and the Plaintiff may demur
to that which is not to be barred by
fines, for the reason: they had
notice to bring it on the trial, and
yet this was not a General Remainder if
it was to the extent the Declaration
will be defective, as far as relates to the
one which is true. But in case one of
the heirs of the Defendant should have
died, or should be dead, the Plaintiff
will entitle damages, judgment will be
arrested, because it cannot be returned
they have never recovered have been
prevented on the good Ground, and have
succeeded on the bad one: Quere if there
is a remedy against Defendant, otherwise
the Court is bound the prejudice of Parties

Sum. 205
Ch. Sum. 78.
Pl. Cases 10.
Q. Sum. 5.
Th. Mag. 595.

Sum. 95
Ja. R. 56.

Pleas and Demurrer.

[illegible] the judgment and the [illegible] will then be [illegible] the remainder bar. The plea [illegible] applied to an action and is applied [illegible] for if a bar in bond [illegible] [illegible] 1 Saund. 28

[illegible] 4 Burr. 25

[illegible] the plea of [illegible] is bad as to the [illegible] to the [illegible] it must cover the whole of the [illegible] and be a complete answer to it: otherwise the Plaintiff will recover [illegible] the Defendant is entitled the plea [illegible] in bar to which it is not. [illegible] 1 Saund. 28 4th & 337 notes

[illegible] in an action of Assault and Battery and commitment [illegible] Bonafide [illegible] Trespass [illegible] 2 Bl. 35 & 25 4th

[illegible] a plea which ought to justify the Assault and Battery and which is not a justification of the beating by which [illegible] 2 Saund. 47. 5 Salk. 412

[illegible] the Plaintiff will recover [illegible] for the Assault and Battery as

the wrongdoers of the jury above granted
damages, but the Plaintiff's counsel
moved for a new trial for the reason, inter alia,
that the damages were excessive, that
the Court erred in overruling the motion
for judgment notwithstanding the verdict,
and that the Court erred in overruling
the motion for judgment for the defendants.
The Plaintiff by his own showing recovered
more than he is entitled to, and the jury
found more than he is entitled to, because
he omit the excess and take judgment for
the residue. They of the Plaintiff in error
[illegible] Appellant should discover his
title to the Saints' land, and it should
appear that he had no title to any of
them, and the jury should find for both
[illegible] defendants. An insufficient
[illegible] would be error. Possession
alone is not sufficient, but if it is insufficient
not in form and merely pleading over
will not do. [illegible] is a sufficient [illegible]

Sec. 15 Sec. 25 Stat. 1st 9 Stat. 223 Pitts. 28

Pitts. 28 Stat. 1st 150 [illegible] 282. 284 5 W. 195. " 272. 3 Pet. 113. " 134

omitted in the Defendant shewing that in his plea which ought to have appeared in the Declaration but would [illegible] Pleadings which prove the Declaration. The answer to the Declaration must be made by the Defendant. There are certain Dilatory pleas or plea to the action: 1st Dilatory pleas are called so because they merely tend to protract the period of action. In England by the Statute 4 & 5 Anne no Dilatory plea is admitted without an affidavit that it is true, but if upon the Defect is apparent on the Face of the Declaration the Court will prevent false pleas: Dilatory pleas are of three kinds: 1st To the Jurisdiction of the Court. There are several causes for which the Defendant may plead to the Jurisdiction of the Court, as upon the ground of privilege. So if he is an Ambassador or one

Cro. Eliz. 5. Tidd. 6. 8th ed. 39. 3 Bac. Ab. 29. Lawes 87.

Pleadings which follow the Declaration

2 Bl. 5. 4 Ed. 3

4 Bac. 35 note 3 Bl. 6. 300. 3 mod. 31

the

1 Bac. Ab. Ed. 1736 Gen. Ch. 2 Vern. 203 3 Bl. C. 301.

court. In Chancery the regular mode of proceeding is not to be done in a matter until the parties have been regularly apprised of the court, and the other court of at the same time it would be in vain. The power of parties to call them out; it also that the cause of action arises out of the local limits of the jurisdiction in a court plead the privilege of attorney where obtained of the court, unless actions are brought against them in their own right or private character. But if it is brought in a representative capacity he cannot plead their privilege; if he is sued as an executor or administrator he cannot claim their privilege; if he is made co-defendant with a stranger having no privilege; if he is the cause of action [illegible] the privilege where the action is of such a nature as not to be cognizable by the ordinary

Gr. Ch. 1 Ed. 176 177

[illegible] [illegible]

Accommodating remedy to the defect the [illegible]
[illegible]. When the Court has a general
jurisdiction, it is not a good plea, that
the cause of action arose in a
foreign Country, if the action is transi-
tory: but it is in local actions, is a good
plea always. Generally, of actions
where the subject of the action is local
the action is local, e.g. in trespass, eject-
ment, &c; but where the subject is per-
sonal or chattel, the action is transitory
[illegible] [illegible] [illegible] [illegible].
All personal actions are local for all the
[illegible] [illegible] [illegible] [illegible] [illegible]
tion,
[illegible] [illegible] the [illegible] [illegible] the foreign [illegible]
each [illegible] Sovereign State of this country
[illegible]. So [illegible] boundary [illegible].
Every Sovereign State is a foreign [illegible]
foreign State to [illegible] State. The State
of New York is as foreign to other States as to a for-
eign State: Another plea to the jurisdic-
tion is, that the Court [illegible] [illegible]

[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
4 Mass. 503
5 [illegible] 646

[illegible]

[illegible]

[illegible]

the Court therefore be stayed pending
a suit in the Court of the land, whether
or not it be of the same

Mr. Dickinson said the second kind
are those to the difficulty to the Plaintiff
in Error, in that the Plaintiff
had right and capacity to maintain an
action. Blackstone considers grounds for
this plea: as 1st Outlawry is a com-
pound bar to the plea to the disability:
for the act of the law, merely as a punish-
ment for a crime, disables the Plain-
tiff to prosecute an action. Civil Suits are an-
nexed to legal rights. Upon Outlawry
arising after the cause of action accrued
the Defendant [illegible]
[illegible] disappears [illegible]
[illegible], and [illegible] the remedies
provided and offers that the Defendant
[illegible] plead to the prosecution. But if the
Defendant [illegible] before the accrual of an
action, or [illegible] he could have destroyed
the

Coke Litt. 128 b.
Salk. 292.
Carth. 303.
Hawk. 195.
Lawy. 109

J. Dickinson

Blackstone Comm. 128
Bac. Ab. Outlawry
2 Ch. Pl. 1
Sec. 195

Plaintiff in Error
Defendant in Error

[illegible] Outlawry

[illegible] hence no action whatever can be brought with the Plaintiff's name in his own right [illegible] [illegible] in the right of [illegible] as Executor or Administrator: Consequently an outlaw cannot sue as Executor [illegible] in the other case [illegible] [illegible] [illegible] brought by the Executor or Administrator, for the Executor

b. could have any right [illegible] [illegible]: But though an Outlaw cannot sue in his own right yet he may be sued [illegible] [illegible] disability [illegible] him of a right [illegible] to punish him with [illegible] community. Outlawry [illegible] always be pleaded [illegible] [illegible] it may sometimes be pleaded as a plea in bar: [illegible] of [illegible] [illegible], when the cause of action is forfeited by the outlawry, as in the

case

Pleas and Pleadings

one of Felony his Outlawry ought to be pleaded in bar to all actions for goods chattels debts or duties or for them and forfeited to the Crown. Here the Outlawry is pleaded to the title and not to the Disability though it be: But when the cause of action is not forfeited Outlawry cannot be pleaded only as a Declaratory plea: because here it goes to his right to maintain the Action and not to his title to the thing: So if an Outlaw sue an Action of Assault and Battery Slander &c here his outlawry could be pleaded only to his Disability: If therefore an Outlaw is impleaded he may plead in abatement the plea is to his Disability for the right and not forfeitable. The next Disability attainted and Pardoned. Remember in the Case of Outlaw in England Disability a person to plead in his own and maintain his right

5 Co. 109
6 Co. 29
Co Litt. 128
Ibid.

Ibid. 128 b
Dyer 297
Ibid. 76

Co Litt. 128 a

Mean and Tenancy

of another or Tenant. Another Disqualification is Alienage: But in some cases a legal Disability in the Plaintiff takes out a writ. [illegible] There are three Distinctions to be observed. 1st. An alien born, though not a British subject, yet naturalized or made a Denizen can sue in his own name. 2d. An alien born, though not a British subject or Denizen. But that action is meant an action brought for the recovery of something real. By a mixed action is meant, one brought for the recovery of some interest in land together with damages. All Real Actions in England are brought to recover a freehold: Great Incent Rents & [illegible] Actions. 4th. Personal Action is one brought to recover something personal, by [illegible] 1 Ld. Raym. 59 Comp. 91 Doe 6 Bac. Ab. 63 Ld. Raym. 384 1 Ld. Raym. 84 Ld. Raym. 91 [illegible] said that an action cannot be maintained under [illegible] land or tenant, yet the [illegible] [illegible] a personal action. [illegible] 113 in

and

is not law for he ordains that transitory actions may be maintained in any foreign State where the parties may be found: an alien enemy a prisoner at War can maintain no action of any kind: he is under the ban of Nations and if injured he must seek redress from that power: The above is a general though not an universal rule: for it is settled in England that an alien may maintain an action on a "Bill of Exchange": thus if a contract made between the "captured" and "Captor" that the former will pay a sum of money on the Captor releasing him and it happens to generally be liquid or sterling: So also if an alien enemy resides in a Country with which his Country is at a War having a licence or protection or safe conduct he may maintain a personal action: So if the Plaintiff or Carrier sent from an Ally sworn to and other many lines a fine

Ex. 239.

Sto. 1082
Chitty and
Pat. 65
Bac. 83
6 Rob. 96
Ins. 129.

Pothier
Com.
Blackburn
Bay. 609
Bac. 1434

Ex. Com. 1880
Sach. 40
" 45

mal

Sl. Ce. 152
Foster 281
8 Pick. 86
2 Stor. 8

action: rights have a lawful as is frequently given to seamen engaged in fishing pursuits be mere personal action. Neither an alien enemy nor a person protected can maintain an action in the right of another as Executor.

1 Sel. Pr. 153
Fox 88
6 Ch. Ca. 8.

such yet settled. There are reasons of policy to be urged on both sides of this question. If time forbids that he ought not to be allowed to maintain the character of an Executor, whether merely pro ac dicto, or otherwise, although the effect should be, that he should now or never, that neither should be allowed.

Although an alien friend cannot maintain a suit in subsequent action yet he may maintain an action in the right of another as Executor for a tranquil year, he is treated here and in the civil law as the same person. There are many other differences all governed by the law of nations having regard to the mutual

Pleas and Pleadings

An Infant Plaintiff. Infant Promise
presumed to be the proper Probability of
Coverture: This is pleadable & the Liability
of a feme Plaintiff who sues a-
lone: that she is a feme covert, that
she is a married woman: If the Defen-
dant joins with issue this plea is bad:
But Coverture in the Plaintiff is plea-
dable only in abatement & can be pleaded
to only in a Dilatory plea, and not in a
plea to the action. In a personal action
that matter must be pleaded as a Di-
latory plea, and not be pleaded in a
any other plea of the Pleadings: If a
Married woman is a necessary plaintiff
she must be joined in abatement, for
by the Marriage she ceases the Devise.
That the Plaintiff is an Infant being
without a Guardian or next friend is
pleadable by the Defendant: the reason
for the rule is that he can not sue
or appear by Guardian or next friend

4 Mod. 380.

1 Ld. Raym. 132
2 Str. 1126
Fitz. 135
3 Rep. 131

Bartlett
3 Rep. 63.

6 Mod. 70

1 Ld. Raym. 516

Plow. 39

3 Burr. 1
3 Bac. Ab.
Infant. 290

Cowt. 24
Ld. Raym. 1

[illegible] [illegible] [illegible] [

it: Plea in abatement generally to
law to the Writ only: Subject in the
Court on Declaration and pleaded by
pleas of different kind, as had formerly
in England there was a difference in the
longitude between a Writ and Decla-
ration, for one part of before the action:
the Writ is that part which precedes
the statement of the cause of action:
Declaration is opening with
"Whereupon the Plaintiff declares and
says" after the Declaration the Writ
or Summons "and of failure of
Date, recognizance certificate of Notice
and Report of Magistrate are all
part of the Writ: But though generally
true and universally true that a plea in
abatement does not reach the Decla-
ration as in case of Misnomer &c
a proper subject for Plea in abate-
ment should contain in the Decla-
ration, Variance between the Writ and
Decl.

Par. 5
Salk. 208.
Carth. 174
3 Lev. 351
3 Bl. 1305

Plea, and Pleading.

Why the Defendant is a proper plea in abatement. 1 Ch. Pl. 455. Lawes 195. 3 Bac. Ab. 5.

Declaration is a proper plea in abatement, but it goes to the Declaration: but this Court considers the, as more properly with the limitation of actions. Bac. Abridgment. Exceptions to the Writ. It is a common practice to take advantages by a plea in abatement of a variance between an intermediate recital and the Statement of it in the Declaration. In England this is not the practice, though at Common Law it was necessary to have given

3 Th. 85. 3 Ch. 85. Bac. Ab. Pleas. Bac. Ab. Pleas. 1 Ch. Pl. 455. Lawes 195. 3 Bac. Ab. 5. 1 Bac. Ab.

Pleas in abatement are always presented both by Judges and by Lawyers as things based in they generally tend to prolonge the Pleadings. Hence the Judges in England are very severe in their and every attempt of Pleading except. Rule: The least inaccuracy in a plea in abatement is fatal.

The causes or grounds of Abatement. These are either intrinsic or

extrinsic

place and the adverse

extension the cause may be in the

itself or superficies or in the

of it: the final cause of what

exists is perfection and end of

existence: the influence of the Defen-

dant is a good cause for abatement

whether the nuisance is in the soil or

declaration: so also want of the De-

fendants position in in England good

cause of abatement: that is a descrip-

tion of the tenement is required by letter

degree, place, state, and occupation.

Other particulars by the Statute of

must be added to the name by way of

description = it occurs that in England

the Court and not so particular as the

regard to the place of abode is in Ireland

but with regard to the letter much more

the statutes of Henry & Geo. 4th

personal actions, which are in ef-

ficacy, are not to real actions, because

in real actions the Defendant could

Do not

3 Bac 324
Sack 7
3 Gen 167
3 Bl 169

3 Bl 168
Cowp 306
Cowp 94
Ord 97
Cowp 1

Cowp 1

Bac Ab
Bac 168

Pleas and Pleadings

Can receive the land of which he is in possession and this is sufficient to lay the foundation of possession of possession is

5 Co. 94 Co. Litt. 277 Rowlett 15. sufficient to be a sufficient title against a stranger in possession. The possession of the defendant is the plaintiff's place of trial. When he comes under

Cro. Eliz. 80. 2 Saund. 84 3 Bac. Abr. 62. and in an official capacity or other civil capacity that possession is necessary to give him title to execute is supposed to be the commencement of the action

It is proper to observe with a view: so that a person as Sheriff by accepting a possessory title as Sheriff: & then the Plaintiff or Defendant when he acquires the right of possession

Co. Lit. 336 Plowd. 88 a possessory title not with the Sheriff is never overtaken: the Defendant is not bound to be in the Defendant: nor can he take advantage of it unless perhaps upon

the record of nariance for the party mis-
named may accrue to the misnomer
and there is no injury wrought to the o-
ther Defendant: the name Paul Lady in-
indictment, = ff has been a question
in the Books, and now seems appear to be
settled: Cont. Whether if a Writ is abate
ble as to one of personal Defendants, for a
misnomer, does it abate as to the whole?
Lord Holt thinks that if the cause of
action is joint, it does abate as to the whole
for the other Defendant might immediately
plead the Misnomer in abatement: but on the other hand where the
cause of action is joint and personal
he does not see why the Writ of course
should abate as to all if it does as to one
this Gentleman Mr Gould concurring, to
be personally of opinion = Bian in
personal pleas as to misnomer that
the Defendant who pleads must give
the Plaintiff a better Writ: i.e. he must
set

3 Bac. 606
4 Bac 35
2

2 Salk
p 6 Ca 174

Barth 96
8 Co. 159 b
3 Bac 606
4 Bac. 45
1 Com Dig 79

1 Bac

not forth his right name ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ the addition given of calling; and if he does not he pleads to all bear in abatement. By giving him a false name is prevent such dan-
Fitzherbert 4 Ha 5 Tilly 50 mage as that the Plaintiff may afterwards avoid the same mistake. Great particularity is necessary in the Pleas of abatement respecting the Defendant. Not only state his true name but he must traverse the name by which he was called in the first Writ. He
Gilb. Ev 5 Bac. 504 must also state that he was called and known by the name which he says is his true name. If the Defendant in pleading abatement begins his plea in the same precise form in which he begins a plea in bar, "The Defend.t the said A. B." they acknowledge the
Mo. Rep. 118 " 249 Allen 20 Salk. 5 name which he wishes to deny: but he must say "Non est factum" which is called
5 Mod. 58 Comyns 20 in

Ideas and Meanings

in the Civil & Canon and Roman Law.

This power of Abatement is to be taken advantage of only by a person in abatement, the rightful possessor to the exclusion of all persons in possession. Hence it could be an instrument by a tale or tenant in dower and is to be used on that instrument if it is done, for it must be used under the wrongdoer and his heirs and is to come in under an action. The 1st Ferne case seems not to be the foundation, and that he ought to be used by his proper name and then upon that he digest the instrument with another manner. This is clearly a right and the Ferne-breaks the right way. He says he has various practice on the Latin and the Old was formerly thought that a person in the Decretals & Christianity was and a ground of abatement but Lord Hobart, and is settled to be the same as a tale in his Succession Law

Carth. 244
Salk. 2
Comyns 188
Hob. 143
3 Bac. Abr. 134

Mag. Cha. 218
Dyer 275
Hob. 216
3 Bac. Abr. 134

Year Book 7 H. 4 f. 2 pl. 2
Bro. Ab. Ass. 3
Co. Lit. 277
Bac. Ab. 218

Pleas and Pleading

8 Wh. 308 When two or more persons are to be named
the writ must describe all the Defendants by their proper names. Therefore
if the Christian name be different or
Exch. 1 it respects a corporation then
are to be made in their corporate name
the name of incorporation
must be sufficient: it is error
being in the Defendant to the purchase of
his own Bill to take advantage for any
error for the Court afterwards to amend
3 Bac. Ab. 18 by the same thing: if one under
name, he may plead the former recovery
mentioning the misnomer. A Wrongness
Bac. Ab. Plaintiff may be allowed in abate
Pleas & ment but be such a plea as recognition
Lawd. 25 that he was called and known by that
name in deed. But a wrong condition
3 Bac. Ab. of Plaintiff must generally be pleaded
Pleas &c. in abatement. Here is not the same Danger
of a mistake. The Stat. of 4 Geo. 3 c. 26
postponing Judgment in case of a Plain
tiff

Pleas and Pleading

In Bonnecollent a mistake of the Plaintiffs place of abode in a cause of abatement - It is not necessary to give the Plaintiff's residence except at Common Law and not then unless he has the Dignity of a Knight. At Common Law the Defendant was not privileged to indict records for false, because Constat ex hoc quod the prisoner must be present at trial. but now by the Statutes it may be pleaded in Abatement in this case as well as in other.

A second cause of Abatement is "Coverture". But in some Schemes this is pleaded against her, meaning the Suit does not abate because it was rightly commenced - and she should not by her coverture defeat it. But if a feme sole, avail herself of her Coverture at all, has it pleaded in abatement: She can not plead it in bar and by pleading over she waives all exceptions to prior pleadings

3 Bac. 617

1 Brook 186
1 Hale 243
1 Sid. 40
1 Bac. 36
Co Ent. 152

2 Lutwy
1 Mod. 132
1 Sid. 140

2 Ray. 1305
Salk. 44
Co Ent. 793
1 Bac. p. 10

Litch. 90
1 Bac. 29
39

some

Pleas and Pleading

Salk 400
2 Ld Raym 651
1 Ld Raym 150
Com. 454
1 Bac. Ab. 35

Bonne Bonne that her Husband proceeding by
Ejectment obtained Leave in a Court
and in some stage of the Proceeding but
it is to be understood that this Power
can be taken only by the Husband
having filed an Bar at some stage of the
Suit and must have frequently prevailed
where a Wife from being in great
in put having filed an Abatement
and the Wife can not waive the right of
her Husband: the Devil of Power in this
case is to be brought in the name of the
Husband and Wife. the Wife could not
bring it: That her Plaintiff prevailed on
her Ejectment and as Husband and Wife
are put such ~~in~~ cause of Abatement
this is not an universal Rule: for where
a person proceeded to a Divorce after
Wife he may be subjected in many Powers
It has been observed that it is not in
Power a Divorce Proceeding or Mary be issued
the Fact not over: but if are Defaced in

Cro Car 1
Cro Car 1

Cro Car 1

more

pura without Guardian by no cause of
Abatement. The Court will in such
a case give time for summoning in
the Guardian, and if the Infant has none
they will appoint him one "pendente
lite" and the Guardian is appointed by a
Reg. Court. If an Infant is sued as Heir
or on an Obligation of his ancestor, his Ne
fancy can not be pleaded in bar nor
Abatement but the parol shall dur
ing the Infancy until he attains full age. Under
the stat. of Ch. Provision and Conserva
tors are appointed for Lunatics, Idiots,
persons of unsound memory &c and they
for my cause nothing without consent
from their Owners. The same course is
taken and the same rules apply here
as in the case of Infancy. Guardians &c
The most cause of Abatement is the
death of the parties. According to the
Com. Law if a sole Plaintiff or sole De
fendant dies pending the suit the ac
tion

Co. Litt. 88 b
3 Bac. Ab. 427
Prest. 89
" 135
Bac. Ab. 149
Co. Litt. 180

Co. Litt. 88
Brown 105

Daily 174

Ibid. 89
Co. Litt. 88
Co. Litt. 282
Ibid. 7

10 Co. 134
6 Co. 26
1 Rac 7.8
Certainty
Plaintiff

The rule was, the death of one of several
Plaintiffs ought to be shewn by
way of exception to the plea to personal
actions in case of Executors and Ad-
ministrators but in Real actions, there is no
exception, because in Real action, by the
death of one of several Plaintiffs the
Freehold was vested by the f. accrued
At Com. Law if one of several Plain-
tiffs died after Verdict and before Judgment
the Judgment was arrested: If one of several
Defendants died the plea was that the
Writ should not abate, but in Point of
Law the action must perish as well
as the Death of the one, and proceed
against the Survivors. But in this case
where one of the several Defendants died
if the Plaintiff should recover and
take Judgment against all, the Judg-
ment should be Erroneous: Judgment
against a Dead person is always erroneous
unless by fiction of Law (as when the

5 Rep. 86

3 Lev. 86
Bunc. 87
Cro. 8

Bandy 89

the)

the cause is ready for judgment the Court and Court adjourned: if before the next term the Defendant dies they will give judgment nunc pro tunc. These are the rules of the Common Law, but by the Stat. 17. Car. 2. c. 8. and 4 & 5 of William and Mary the inconvenience by the death of the parties is remedied: there is also in Connecticut a similar Statute = Where two or more Plaintiffs or one dies pending the Suit, the Suit can not abate, if the cause of action is such as would accrue to the survivor: so if one of two Defendants dies pending the Suit: As to the case of sole Plaintiff or Defendant the rule is, that if the sole Plaintiff die pending the suit and the cause of action was such survive to his Executor, the Suit shall not abate and so if the sole Defendant die pending the action, the Suit shall survive against

Conn. 149 Hoyt 26 to 39

1 Rud. 10 2 Rud. 10 Com. Dig. 3 Bac. Ab. 2d edit.

Executor if the cause of action would
9th Geo 4th c. 94 survive against him. This is the rule
under the Bond Act before mentioned:
In the Courts in England except that if
the Plaintiff die before an interlocutory
judgment has been pronounced, the Suit
will not survive in his favour; and if
the Defendant die before an interlocu-
tory judgment has been pronounced, the
Suit cannot survive against him:
4 Geo. 4th The course of proceeding in such cases is
different. If a sole Plaintiff die when the
action will thus survive to his Executor
or Administrator, the Executor or Administrator
may suggest the death of the original
Plaintiff on the record and prosecute
with the Suit: But if a sole Defendant
die, when the action would survive a-
gainst him, the Plaintiff must take
out a "Scire Facias" against his Execu-
tor or Administrator requiring him
Rule 42 to show cause why judgment should

not

not go against him: Suppose there are two Plaintiffs and both die during the pendency of the Suit: there is no provision for such a case: Mr. Cooper supposes however that after the death of the first Plaff it survives to the survivor and when he dies the case is that of a Sole Plaintiff and it survives to his personal Representatives and to the Executor of him who died first. The same rule will apply to two Defendants, both of whom die during the pendency of the Suit: it will go to the Executor of him who died last. Real Actions abate generally on the death of the sole Plaintiff or sole Defendant, for the Heir is the party who prosecutes and the Statute does not extend to Heirs. Another cause of abatement is, what is called in Law Variance or a difference between the things which the Law requires should be alleged: If the first and Declaration varied in

St. 5. 24 Ja. c. 5 1 Saund. 65

Co. Lit. 87 Hob. 169 1 Saund. 75

1 Cooper 64

cause of

Yelv. 5. 8. 4 Bac. 1 Ch. Ca. 249

cause of abatement: the Declaration itself abates the Writ: for as the Writ is the foundation it can not be referred to that which cannot follow it. If the Variance is in a point material of form, a plea in abatement is necessary: but it is clear in these cases Both, that a variance in substance, is not necessary for the Defendant to plead in abatement, for he may remove an action of Trespass

Yelv. 279. 1 Bac. 234. 2 Ch. 22. 2 Ch. 95. 98. 2 Ch. 500. 3 Ch. 658. 4 Ch. 70. 4 Bac. 246. 1 Bac. 203. 4 Ch. 57. 59. 1 Bac. 204. 1 Ch. 2.

Variance between instruments used upon oath, and a recognition of them in the Case is good cause of abatement: As if the Writ describe the bond for 1000 £ and upon oyer it appears to be but 100 £: by law: When there is a variance between an instrument declared upon, and the description in the Declaration, tis usual to take advantage of it in evidence under the General Issue. There may be a variance where the Contract is a verbal one and not in writing: Here again the advantage

Cro. Eliz. 14. 2 Bac. 282. 4 Bac. 246. 1 Bac. Abr. 67. 3 Bac. Abr. 67. Cro. Eliz. 12.

1 Saund. 154. Doug. 661. 1 T. R. 656. 4 Bac. 622. 627. 628. Comb. 406. 4 Bac. 1 Ch. 2.

advantage must be taken under the General Issue: When there is a variance between the instrument and the Declaration, it may be taken advantage of in England, in several ways: 1st By a plea in abatement: 2d By a plea of General Issue, and making objection to the Deed: 3d By praying oyer and reciting it on record and demurring to it: 4 and lastly, the Defendant may, on Special, demur to the evidence: (as) recite the bond, plate the fact, and then say the instrument is not sufficient in Law, and pray Judgment that the Jury may be dismissed from further consideration of it. It has been observed that a misnomer, or mistake, could only be taken advantage of, by a plea in abatement: yet it may be taken advantage of, a variance in any of the foregoing methods: Another cause of Abatement is the misjoinder or non-

Hob 18.
1 Saund 317
Plowd 29.
2 Mil 399
3 Ch. 114
Bac. Dig. 3
Mad. 95
Cro Eliz
Cro Jac
Yelv
Saund 2
Cro Car

1 T. Rep. 656
4 Co. 612

6 Co. Litt.

10 Rotten Non Joinder of the parties in either cases the Defendant may plead in abatement: under this division, the distinctions are numerous and important. 1st If one Plaintiff sues alone, when several ought to be joined, the Non joinder is always pleadable in abatement. 1 Saund. 291. 1 Bott. 160 a 192 — 199 a 198 a Salk. 11 — 27 Rob. 208 Thus if one of two joint Tenants, sues without the other, he pleads in abatement: and so in certain cases, tenants in Coparcenary must join: So of one of two joint Obligees, Covenantees, promisees &c. Where several persons are, where the right of Action is in one it may always be pleaded in Abatement: There are certain cases wherein it is not necessary for the Defendant to plead in Abatement, although he has it in his power: So in an action on the Contract, if one sue alone when other ought to be joined, the Defendant may take advantage of it, under the General Issue: 4 Mod. 70. Co. Lit. 198 b 1 Rolle Ab. 2 Lev. 245.

Plea, and Pleadings

Issue, or he may plead it in abatement
So if the whole Plaintiffs joint interest
or part ought to be the Defendant may
take advantage under the General Issue:
If the Contract is written the Defendant
may pray oyer, recite it, and demur
and Demur: If he demurs the Defen-
dant may plead in abatement for
the Contract proceeds not the Contract
declared upon: Then upon oyer the con-
tract appears not to be made with the
Sole Plaintiff, but with A and B. The
pleas must pursue the Declaration
according to a late Decision, if any partner
is dead, you must withdraw his name
from the Bill, but receiving part of the pro-
fits is not joined in a Bill it will not a-
bate the action: Yes in Case on Ex ante
Contract ought to be used = If in Case
Trover of Contract, one must plead, where
other ought to be joined on the affirm
on the face of the Declaration, the Decla-

2 Wils. 20
Cul. Ca. P
in 152
2 Str. 820
1 Bac. Ab.
Cul 452
1 Saund. 154
Doug. 91
79.

Pla. Reg.
p. 55

1 Ba. Ab.
Ex. Ex. 16
1 Saunders
Cul. 60
15 mod. 16

palties

Bacon 99 & 5 Co 206

is flatly law, and not aided even by a Verdict: and the Defendant may also prove upon poite in, and demur if it is a bottom Contract: But in case of lost, the Plaintiff: there is no such thing as waiving the case of lost: So if one of two Joint Tenants bee another person in the lady for entering on the land of the Joint Tenants, he can not take advantage of the Joint Tenancy under the General Issue, but must only by plea in Abatement: Now the reason of this is, that the evidence will not support the Declaration: In the case of a Contract in writing they "I did not promise to pay, but to you and B"

5 Tick 156 Cal 1 Ld Raym 8 Salkeld 2 Ld Raym 1 Ld Raym 224

but in case of both Joint Tenants are not joined, the Defendant can not make this plea, for he has in fact, they joined in the Plaintiffs Case: the right and his sole Case: neither could the Defendant in this case plead the General

Issue

Yours, though the face of the Plea: joinder appeared on the face of the Declaration itself, but he must plead in abatement. Again in case of tort, if two sue where the right is in one only, advantage may be taken under the General Issue the same as in case of Contract: and the reason is that the Defendant has not committed a trespass on these two Plaintiffs, and you will remark that in case of two or more Plaintiffs, if one recover all must recover: You can not enter judgment in favour of one or more against the others: but in case of the Defendant, judgment may in many cases go against one and not against the others. If one part owner of a chattel, sue in an action founding in tort for his share of the damages and the Defendant may not plead in abatement, the non-joinder of the other owners but suffering the judgment to

be

2 Lev. 211. 2 Ch. R. 586. 2 Ld. Ray. 586. 1 Ld. Ray. 562.

to be pleaded against him, and after trial the other part cannot plead in his place of the Damages, the Defendant cannot be allowed to plead in Abate ment, the other joinder of the other, but for present will go against him.

Next of the Plea joinder and Misjoinder of the Plaintiffs, and here the rule is: If one of the Partners who are sued on Contract is dead alone, he must plead in Abatement: So if one of two joint Obligees is dead alone, he must plead in Abatement, and so of Debtors in Simple Contract. Co. Litt. 11 a. Cro. Eliz. 5 Mich. 63. 6. Co. 139. 2. 87. 4 Leon. 3 Bulst. 2 Saund. 291. Carth. 90. 1 Ld. Ray. 562. 2 Ld. Ray. 586. 1 Salk. 27. 1 Ld. Ray. 562. 2 Ld. Ray. 586. 1 Salk. 27. 1 Ld. Ray. 562. 2 Ld. Ray. 586. 1 Salk. 27.

Cro. Eliz. 5 Mich. 63. 6. Co. 139. 2. 87. 4 Leon. 3 Bulst. 2 Saund. 291. Carth. 90. 1 Ld. Ray. 562. 2 Ld. Ray. 586. 1 Salk. 27.

is a Cause of the Declaration that there is another Party to the Contract and that such party is living: The Declaration is not bad, unless these two facts appear, viz. the joining in the Contract and he being alive: There has been great contradiction in the Courts on this subject, but it is now settled:

Plea and Pleadings

Lord Mansfield's reason for this, is that the Defendant knows, who his partners are, but the Plaintiff can not always find them out. The true reason is the evidence does not support the Declaration: But in case of tort, there is no such thing as "then and there joint" of the Defendants, for all torts are joint and several in the strict legal sense of the word: You can sue one part or all of them, but you can have but one satisfaction: There is an exception to this rule, when the right of action grows out of a joint tenancy among Defendants, for here the action must be brought against all: there is no reason for this distinction: Now in certain cases in England, individuals are bound to do certain acts as a condition of tenure; as to repair a Bridge, road &c. Now perhaps any joint Tenant guilty of this neglect, has a tort, and all are guilty

6 Term 361
Salk 404
contra

5 Term 651
1 Saund 291 E
2 Bl R 182

guilty or not guilty, and then an Defendant who is discharged by the plea in abatement may also plead an abatement that there is another Defendant who ought to be joined, but he must plead his own and plead it a plea in bar to the action against Defendant and a plea in abatement if he plead that he ought to be joined and then an action is brought against them & Defendant and the same blood that brought to be joined be being another Defendant Joined in a joint and several contract made by them is brought against them they must plead the non joinder in abatement. If the joinder are heads on a contract where only one is liable and a tortfeasor may be taken of the vendee the General Issue. The evidence does not support the Declaration. If two are joined on a contract and the jury find the Special Verdict that the contract

1 Chit. 44.

Hawkins

1 Saund. 153.

Phillipson & Bartlett 3 M. & S. 67

declare

Declaration when tried by one only the judgment must be arrested, for the whole: no judgment can be rendered against either, because the Contract laid in the Declaration, is negatived by the verdict. Moreover the Plaintiff in the case cited a Rule prohibiting to one and proceed with the action, for this rule to be to change the parties and substitute one cause of Action for another: The last mentioned subject is important: 6th. Pendency of Prior Suit. This is another cause of abatement for both the same thing between the same parties: "in a Legal Maxim that" The law abhors a multiplicity of suits". No Man having commenced an action well adapted to his case, in one cause of Action, can commence another for the same cause against the same person: and if he does the pendency of the former is pleadable in abatement

2 Com. D. 49

2 Pick. Rep. 49

1 Gould's Plead. 48

obtained to the latter. The plea applies only when the cause of action is the same in both suits and accompany that they should be of the same time, for a very one convenient which arises out of the same fact. The Supreme Court: Though the suits are pending between the same parties and though the cause of action arises from the same transaction yet out of the same fact yet the thing for which the action is brought is not the same the one is not pleadable in abatement of the other. It is immaterial whether the actions are commenced before the period or before different Courts. In England there is an exception that where the foreign action is and superior Court because the Inferior Court cannot proceed and entertain a Petition of Ne exeat accompany for the purpose of defeating the Bail. Ruled that the former be pending at the time of pleading: It is suffi

cient

Abatement

Bail

Bond

Bond – 18

Circuit Court of Rockbridge County Bail – 18 Bond

18. 5.

Plea and Pleading

If it was pending at the time of the commencement of the second suit between the parties and always considered as a separate and distinct suit, the issue of a judgment of a former suit for the same cause of the second suit is not a sufficient bar to be advanced; and the latter should seem to be, that the first suit ceases to be the property of the second suit; thereby other state being an action against Plaintiff and before they is disposed of bring a second and against Plaintiff and another action. Writs, the first should be postponed in abatement of the second. On the other hand though and of the Defendants in the first action is omitted in the second, the pendency of the first is plea in abate as to the second; and hence the last must abate entirely: from this however remember that if the first action should be discontinued, the pendency of the former is not plendable in abatement

Ed. Law. 1 Ed. 3. 4. 20. 4. 9. 6. 7. 5 Coke 48 Plowd. 3 Bac. Ab. 5

Lindsay Smith 9 Co. 97 Dott 6 Co. 9 Bac. Ab. Coke 4 Co. 92 Plowden Bacon Abr. Contd.

Bac. Ab. Dyer 102

Clear and Plaintiff

statement to the Court. To prevent this
Cite from creating confusion on the
Plaintiff to insist that the second
Cases 3d
Gilb. Evid
from 200 count is sustained on the demurrer
the jury is asked the second shall be
found and have been sustained if
the first is stricken. So that the jury
are to the jury is not pleadable in
abatement to the second. The law al-
lows joint action of assault and battery
against two or more to be tried. But
Blunt
Stg. 1. 120.
Hil. 1. 3. 8.
it is no cause of abatement that another
action for the same cause is pending
against a Stranger. And it is no ground
of abatement in Criminal causes that
Foster 3d
v. Hawk. 190.
c. 95. § 6.
Bac. 13
another indictment was for one and is
pending against the Defendant for the
same offence. Courts of Criminal Juris
diction have a kind of concurrent cor-
rective over inferior courts. They will quash
the one or the other as they think proper.
generally they will quash the first.

Cont

But in case an information is filed by the Attorney General "ex officio" or prosecuted by some informer the Court has no such jurisdiction or discretionary power: Yet if two informations and prosecutions by two different persons, on the same day for the same offence, they will abate each other: The day is a "bone-tempestas" and the Court will not prompt to be introduced to shew that one was commenced first. 7th The Writ having once duly issued is another cause of abatement; and in general, it may be laid down under this head, that any irregularity in the Writ is a ground of abatement. Thus if a Writ is made returnable to any other than the next succeeding term, provided a sufficient time intervene, between the date and the Sessions for Legal process the Writ is not only abatable, but is absolutely void: So if the Writ is not signed

Hob. 126. Moore 865 865 Bent. Dig. 6 J.

Lawes 195 Bac. Ab. Writ 26 Ed. 6. 1.

Bac. 341 Salk. 900

against the proper authority, by a bottomed: yet this need not be pleaded specially and every person acting under it is a trespasser. A writ of Error on an impossible date as 30 February likewise a date a writ: in England the date can not be amended: A defective return is also a cause of abatement if the writ is made returnable within the prescribed limited period of 8 days return: In England the time limited is fifteen days before the Court in "Westminster Hall": So also if the Service is insufficient on the face of it this in England is a cause of abatement but if the Sheriff's return is on the face of it sufficient, it can not be contradicted by a plea in abatement: the party is left in such a case to an action against the Sheriff for false return. 8th The want of a "Venue" in a writ is a defect which is pleadable in abatement: The want of

Cro. El. 590. 1 Com. 46

Cro. El. 570. Salk. 63. 1 Str. 466. 2 Hale's Hist. Lettin. 45

2 Str. 613. or 818. 1 Ld. R. 695. or 595

a

"venue" in a Declaration is a cause of demurrer. The word "venue" in Norman French, signifies "Neighbourhood" and it is said in Law to denote the County where the action is laid: According to the strict theory of the ancient Common Law, every action must be brought in the County where the cause of action arose: In local actions, the rule is strict & adhered to, but in transitory actions we have seen that it is evaded by fiction: As in transitory actions, the laying a venue is used instead of force & effect of evidence, that if the venue is wrongfully laid, it is no cause of abatement: The Court or pleaders in its discretion change the venue. But in local actions, the venue being a matter of substance, the laying a wrong venue is matter of abatement. So in Trespass, Quare clausum fregit an action brought in the County of a-

and

5 Geo. 3 c. 32.
4 Wils. 395
1 Burr. 25

1 Str. 91
2 Salk. 667
1 Bac. Ab.
2 Salk. 667
Bark. 316
Str. 120
Bendloes
Ent. 90 &
2 Lev.
Cro. Car. 329
Lawes 70
1 Bac.
4 T. R. 488 &
Com. Dig.
Tit. Ac.
ca. 15.

Ante 3a
Co. Litt. 283
Co. Litt. 303

and the land is recovered, one of the
parties in the Country of the Tried action
is created - That the cause of action
which had accrued at the commence-
ment of the Suit is another cause of
Abatement - This question may also
be taken on a plea to the action: it
may be pleaded in abatement be-
cause the Writ is defective: but a plea to
the action because it goes to the ma-
ter of the Plaintiffs claim: it may
be demurred to or traversed the ex-
ceptions of fact appeared.

2 Rolle Abr. 87 pl. 1
Co. Litt. 303
Electing the Sher. 8 C. 3
Hobbs pm 1 Saund. 1 Lev. 106
Raym. 106
Hob. 87

Plea in Abatement properly begins
and concludes to the Writ or to the Decla-
ration may be to the Declaration for in a Bill
in where the Writ and Decla-
ration are the same by praying judg-
ment of the Writ or Declaration: that
the Same may be quashed or abated &c
A distinction is taken between the
form of the plea for an extrinsic and

12 Lecture
On
A plea in
of the nature
in abatement
3 Bl. R. 313
Lev. 108 Q
Raym. 106
3 Mod. 152.

and

one for an intrinsic defect. In the latter case it is said that they are both to begin and conclude as before shewn: But where the matter of abatement is dehors, the plea only concludes by praying Judgment. ut Supra: except where the plea goes to the person of the Defendant. This distinction is not observed in practice = the plea generally concludes to the writ, but not always: for where the plea goes to the person of the Defendant, as in Coverture it shew concludes by praying Judgm.t whether the Defendant ought to answer: Where the Writ is abated de facto as where it wrongly abates without plea, the plea concludes by praying Judgm.t whether if the Court will further proceed: Suppose the Writ void and the Defendant pleads an abatement, he concludes by praying Judg.t if the Court &c. It is said in Lucas Report that

Bac. Ab. Pleas. Pl. Lawes 108. 109. 160. 1 Saun. 5.

Lucas 84 Lata Ea. Lawes 109

Lawes 109

Cited 103 Lucas 119. 20 Rad. 574 12 Ohio 284 Pringle 3 H. 56 Stil. 89. See 57 Stil. 1

that the character of a plea is determined by its conclusion, without regard to the matter of it, or the manner of its commencement. The rule which rules the character of a plea in abatement should always be positive and the best. This is the simplest and best. But according to Lord Hale who seems to be followed by Meadow Chitty the beginning and conclusion taken together form the criterion. This is undoubtedly true for the other parts hereby only at the conclusion to decide the character. And he takes the distinction that the matter would be good in bar, title if the plea begins and concludes in abatement tis a plea in abatement, but if it is true beginning or concludes in bar, tis a plea in bar. Query if the Matter is good in bar? But tis said that if the matter which is good in bar, or in

1 Chit. 69 Lawson 1051 Gilm. 584. 1 Ohio 194 Ohio 174

Lucas 119 11 O. 416 1 Chit. 69. 1 Ro. Rad. 1918. 6 Ohio 103

abatement

Abatement begining in bar and con-
cluding in abatement or vice versa
the Plaintiff may answer it, as a
plea in bar or an abatement: by to
the form of beginning and conclu-
ding in bar and abatement, vide
Marginal Authorities. A Plea in
abatement formerly on matter which
goes in bar only, is not good as a plea
in bar formerly on matter which goes
in abatement only. But when the Def
has pleaded will go indifferently, ei-
ther in bar or in abatement, the Defen-
dant may plead either in bar or in
Abatement. A plea in Abatement
ought to show that the Plaintiff can
not maintain his action, and to be bar
in perpetuam: it should be plea and in
bar: Good if in the end Sufficiently
linked: Good if the Matter in fact
an may be pleaded either way: then
Pleading and Abatement ought in one
Count

1 Gar. 53
Hutt. 136
2 Ld. 28
3 P. Wms. 11.
55.

3 T. Rep.
11. 53. 54
pa. 105. 106
Lawes Ap-
pendix.

Hut. Pl. 8. 9
2 Lutw. 1.
Hutt. 54
4 Bac. Ab.
80
Plow. 14
85

Hutt. 144
4 Bac. 80

Lawes 39
Up. 24. 5
4 Bac. 99

Hutt. 136
Hutt. 144

cases be pleaded to the capability and in bar. Replication is a fault pap Lord Coke, and a good cause of Estoppel in all pleas but Dilatory pleas. The Defendant cannot plead two different pleas in abatement, or cause of abatement of the same kind to the whole or the same part of the Writ. He may plead all the kinds of Dilatory pleas in their order consistently. He can have only one plea to the action for on this judgment, must go in chief.

Cro. Car. Rep. 6 Mod. 250. Lawes 108. Comb. Deft. Det. abt. Let. J. 3. 4. 5. 6

When a cause of Abatement is pleaded and Judgment pronounced upon it, error lies on that upon it, as upon judgment in chief but not till after a judgment in chief has been pronounced because the Law will not allow a party to bring a Writ of Error till final judgment. If matter of cause abatement is not pleaded in abatement it is waived, and no advantage

1 Ld Ray 195 1 Bac 57 18 15 Smith 8. 9 1 Com 66. Co Litt. 304

1 Bac 39. 2 Roll. Ab. 83. Stile 254 Ld Ray 344 594

Plea: and Pleading

advantage can be taken of it after verdict, variance, departure &c. and upon the principle of variance it has been determined that the Defendant shall not be allowed to plead in abatement & on Demurrer on judgment any thing which he might have pleaded in the original action. A writ may be abated as to part and good as to the residue. The Defend. in case of this kind may plead in abatement and may plead to the action as to the residue: and in this there is no inconsistency. A plea in abatement does not generally go to the merits of the action: A judgment therefore upon it is in general no bar to a subsequent action for the same cause.

Salk. 2 Cr. Eliz. 283 375 Yelv. 383

2 Burr. Rep. 1099 Lawes 106

Lawes 107 pl. 8

4 Co. 45 a b. 7 Co. 46 b. 8 Co. 58 Bend. Eq. 9 Co. 2 b. Dyer 2 b.

The Judgment on plea in abatement when decided for the Defendant, is that the Writ be abated or quashed.

Gilb. Ev. 1 Ventris 2 Show. 42

The Judgment when given for the Plaintiff on demurrer to a plea in abatement

3 Bl. Com. 303 3 Co. 2 Inst. 479

1 Esp. 257. 542 — Abatement, is that the Defendant "pro
perpetual cessat". But if a plea in abate
Yelv. 112. 2 Lev. 369 1 Esp. 360. 1 Lev. 290 Ray. 119 2 Ove 369 — ment is traversed (as when issue of fact
is joined on the in Abatement) judg
ment in England is in chief for the
Plaintiff: the same as to the Action:
This is said to punish the Defendant for
pleading Dilatory pleas which are
false. This rule does not hold in Crim-
1 Bac. 334 1 Bac. 15. — inal cases of Capital offences.
In Connecticut, the rule in civil cases
is that if an issue in fact is joined on
a plea in abatement and judgment is
given by the judges, judgment shall
be a "perpetual cessat" but if found by
the jury this shall be in chief: If mere
1 Bac. 334 — matter of Abatement is pleaded in
Esp. 257 1 Esp. 634 Lutwyche 64 — bar, the judgment is in chief, the plea
is bad and when overruled by the
same as overruling any other plea to any other action:
If the plea in abatement is sufficient
in Law, and the allegations in it are
true

true the Plaintiff may enter a "cause
tion Brevé" (say) pray his own writ
may be granted. This an invariable
rule that the Defendant can not de-
mur in abatement (say) the matter of
Abatement in the Writ is no cause of
Demurrer, since Demurrer goes to the
pleadings only and not to the Writ: the
rule means that the Defendant cannot demur
any Defect in the Writ even if he does
proceed with an against him in Bref
the same as if he had demurred to defect
in the Declaration. But in case of an
indictment for a capital Offence the rule
is otherwise: for if the Plaintiff should
demur to the plea or matter of abate-
ment Judgment would go in chief
after a Judgment of respondeat ouster
a second plea in abatement could not
be allowed for it another could be filed
and upon the same principle the right
it might be continued in infinitum

Fitz. 65
Law Lib

Bilings
179
Salk 220
1 Show 91
Hard 97
Ld Raym

Plaintiff's
334

Gilb 126
Barnes 455
Ass Bing
Ex 3

Fitz

Pleas and Pleadings

[illegible] But when after judgment in favour of
the Defendant in Plea in Abatement
the Plaintiff renews his writ the De-
fendant may plead a new plea in
abatement. It is a rule in the English
law that after a judgment in a plea [illegible]
[illegible] on a motion [illegible] the Defendant cannot
plead in Abatement [illegible] would be [illegible]
of [illegible]
[illegible] is a continuance of a
cause from one term to another after
an imparlance [illegible] he may plead
in abatement but this is one [illegible]
in [illegible] to give the defendant
advantage of the exceptions. The reason
of the rule in case of a general impar-
lance is that the Defendant waives
[illegible] all exceptions but he [illegible]
[illegible] to make an exception which did not
exist at the time of the last [illegible]
if a feme sole [illegible] and [illegible]
an imparlance and afterwards mar-
ries

Clerks and Proceedings

The writ of error for reversing the judgment and the rule of the court upon the trial of a rule of plaintiff in attachment has expired. If the Supreme Court from decisions the patentee of the United States Connecticut, plaintiff in attachment must be made in the Supreme Court before the opening of the Court in the first week of the present term of the Court of Connecticut. The plaintiff in attachment must be made and filed before the commencement of the jury which is the first and the second day of the third term of the Court. But the rule is different in Connecticut where the action brought by an foreign attachment where the defendant is out of the State is found at therefore in that a cause for the second time allowed time at the second term by the time at the first term of attachment issue and be filed

Writ of error

after the rule is out for pleading, unless it goes also in bar of the following under one rule. For whether it be in bar and in abatement, it must be pleaded to the action. Everything of a dilatory plea in abatement not mentioned, shall be deemed to be not waived in our late practice: there is an exception where non-causes of abatement arise pending the suit.

Pleas to the Action or Pleas in Bar. A plea in bar is one which denies the plaintiff's right to recover or his right to action. Pleas to the action are of two kinds. viz. 1. General Issue. General Issue is defined by my Lord Coke to be a single, simple material point, flowing out of the allegations of the parties, and consisting regularly of an affirmative and negative. It consists of an affirmative on one side and a negative on the

Plea 1st

Having of Exhausting Pleas 9th

Pleas 10th

Gen. Issue Plead. 12th

the other: and this is called an Issue
According to the strict rule of Common
Law there must be a direct affirma-
tive on one side and a direct nega-
tive on the other to form an Issue: otherwise this said to be argumentative
pleading which is bad: Nevertheless it
be formed by way of implication. Certainty is required more in this kind
than in any other composition: thus if
the Plaintiff affirms that Peter Stew, is
dead and the Defendant affirms that
he is alive this is not a direct issue al-
though one is true and the other must
be false: but an Issue by implication:
So again the common example of a
Negative proposition: If the Plaintiff
declares his title from the Duke and af-
firms that he was seized in fee and
the Defendant replies he was seized in
tail: this is not good pleading for it is
not a direct denial: But the Statute

Hunt 2 B
2 Bl. R. 3 12
8 Term 578

of

of the rule, is somewhat relaxed in these
modern times, though perhaps not for this
letter it has been decided, that where
one Mr Addison and said he was
born in France, and the other said
he was born in England, that was a
good plea: he ought to have said, that he
was not born in France: there was one
exception at Common Law to be pleaded
in a bar of right the plea was always
barred by two affirmatives: thus the
affirmant says, that he has more
right than the other, and the tenant
says he has a better right than the af
firmant: this however is not proper
ly in technical pleading: Do always
an off a safe to state the plea according
to the strict rule of the Common Law:
for otherwise it leaves to argument
a wide pleading: And it is always
signed and sealed: it receives nothing
but the assent that joined to the plain
tiff

Ibid. b.
Step. 1, 79.
Rastall,
Entr. 505. b

Ibid. b.
Step. 1, 79.

Plea and Pleading

plea. Issue is joined on the two issues General and Special, and that is sometimes called in the Book, the common issue; a plea entered on a bond, but this is the same as the General Issue - General Issue is a denial of all the material allegations in the declaration and puts the Plaintiff on proof of them: by calling General Issue because it denies them generally: a Special Issue is joined on a specific and a particular part of the Declaration or on some special matter stated in the subsequent pleadings. The Declaration may consist of any number of facts, each or all of which are necessary to support the action: Now the Defendant may deny or traverse any of them - It is however not absolutely necessary that the Defendant do this, for if he does he may demur to the General Issue; he may demur all he

Lawes 110 & Bac. 54.

1 W.C.305.

Prof. Stat. 5 Bac. 120 Lawes 145

pleaded

would have been a sufficient plea
to all Actions founded on mainte-
nance or champerty, which the Defendant
in the former Plea had to Debt
brought against him for Debt
on bond or Penal sum conditioned
to Debt on judgment not duly recorded
to an action of account against
Bailiff or Receiver, against Bailiff or
Receiver. to assumpsit, implied or
express against Common Barrators. to Replevin
against exhibit. to Dissseisin the assumpsit
against: and that should say that Plaintiff
is also good in this case: to Trespass
Not Guilty: to an action of Warranty
of a personal chattel against Warranter
&c. to Debt on bond the Defendant
pleads that Debt and the Plaintiff
does not venue to traverse all operat-
ions and the Defendant by taking advan-
tage which by his answer the plea
of Debt" which it is proper plea

Cro. Eliz. 37.
" 250
Bulw. 324
2 Roll. 305.
1 Bul. 93
2 Roll. 305
2 Saund. 116

Cro. Eliz. 38.

Pleas and Pleading

and be pleading over the indebitatus and [illegible] the [illegible] of the term. In an action of Debt brought to recover the penalty of a Statute Not Guilty is a good general plea though Nil debet is the appropriate one. This may be considered as putting in issue all the [illegible] of the [illegible] and gives a [illegible] of the whole [illegible] of the [illegible] with [illegible]. It was formerly holden that Not Guilty was a good general plea to an action of Debt [illegible] because it was called trespass on the case but it is now holden that though it is not a good general plea to [illegible] [illegible] it is cured by verdict though it is bad on demurrer by a [illegible] [illegible] — It has been affirmed that Nil Debet was the proper plea to Debt on simple Contract but it has been holden in [illegible] that Nil debet in assumpsit is a good plea. But to Debt on Judgment [illegible] is not

Hob. [illegible]
[illegible] 85
Cro. [illegible]
[illegible]

[illegible]

Pleas and Pleadings

a good plea to this and every demand for the same action of Covenant broken

Pleading in general is bad but is bad to

Com. 558. an action of Debt on bond but it does not vary the intention. General plea be a plea to the Count or Declaration as and to the Writ must be an answer to the action. If there is an action of account the Writ charges the Defendant as Receiver of the Plaintiff and the Declaration as Receiver of the Plaintiff by the hands of

Salk. 25. [illegible] 81 John Stiles and the plea Never Receiver been but is a plea not to the Writ but to the Declaration which sets the Plaintiff in proof that he was receiver by the hands of John Stiles — The general issue like all pleas in fact answers [illegible] to the [illegible] to the time which to be laid to the time. This however is not an invariable rule at common law for there [illegible] by [illegible] and the time is to be laid by the [illegible] that the [illegible] in

infection

Pleas and Pleading

Inspection, as in the case of Slander, it is also tried by wager of Battel and Wager of Law. But now there is scarcely any trial by Law, Law in fact but Battle. It may be remarked, that according to the strict theory of the Common Law in England the Judges try, and not the Jury in fact: the Jury never try any thing. The Judges could have thought the Prisoner on intermission of a Jury the same as they do a Record by Inspection. It is important to know this for the rule of law, that a party can be but once tried for the same cause of action and especially in Criminal cases: Suppose the Jury first agree in Verdict and retire the Prisoner; now there has been no trial in such case for the Jury have not found a Verdict: there has been no trial till a Verdict has been found and accepted: they have been discharged and Prisoner set at liberty. This is not an

Stat. 5 Ed. 3 c. 9
Stat. 25

universal: so that the General Law
extends to the County and the General
Law of that State record was not con-
clusive to the County but with a tri-
bunal because whether there is any
such matter of record is material law
to be tried by the Court and the party who
alleges its existence prays that the Re-
cord may be inspected by the Court. By
our Statute in Connecticut the parties
may by agreement have any fact in
fact tried by the Court in civil cases
but they must agree to do this and this
agreement must appear on the Pleadings
thus. And this by agreement be puts
himself on the Court for trial. But this
cant apply to criminal cases, neither
was it in actions before Single Magis-
trates for they try both matter of fact and
matter of law. &c to the power of tries
being in fact in both. If the traverse or
issue is on the part of the Defendant

&c

Dyer 73 Com. Dig. Pleas 4 Ch. 2. 3. 2.

Stat. Ed. 1 ch. 1

Clear and Pleading

he concludes thus: and of this he puts himself on the Country for trial: and if the Defendant comes & the Plaintiff concludes thus and the Jurors can be required of both the Country - they in Trespass are Jurors or in other Cases are Jurors joined: Wherefore in their part concludes to the Country the other party saith and the Militia in he also concludes that it may be tried by the Jury. The Decision of the Militia has in England been received matter of fact & law and judgment has been accordingly entering it: but the reasonings have been received sufficient: In Connecticut it has been decided that the decision of the Militia is no Court: Mr. Reed thinks here the ~~[illegible]~~ Militia is neither matter of Law or Subpoenas. In England the Officers never plead or Verdict hard fast the Court to the Jury or not but in Connecticut our Jury

Inst. 124
2 Dec. 315

Bull. 315
Inst. 26.

Ta

Steph. 66. [illegible] 108. [illegible] may [illegible] they need [illegible] [illegible] [illegible]
the ground of [illegible] [illegible] the only use of
a [illegible] is to shew that the party to
whom the [illegible] [illegible] connected to
[illegible] 131 have it [illegible] by the [illegible] accepted
[illegible] 336. [illegible] 75. [illegible] 84. it. [illegible] [illegible] the pleading
and when [illegible] [illegible] on one
[illegible] [illegible] be accepted on the other.
They will be noticed under the head of
Waiver.

Vi et Armis

[illegible] Every Form in trespass [illegible] contains
the words "Vi et Armis" [illegible] [illegible]
[illegible] and [illegible]. These words which are
[illegible] [illegible] generally [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] and [illegible]
[illegible] matter of form. The [illegible] of [illegible]
[illegible] [illegible] the [illegible] [illegible] the point
of the action [illegible] the [illegible] [illegible] allega-
tion in the [illegible] they [illegible]
of [illegible] and [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

and

Pleas and Pleading

are alleged. By joint and Defendants the Defendant is charged with having assaulted the Plaintiff with Swords &c. with the general issue is pleaded that the Defendant is not guilty in manner and form &c. The words here are merely formal and by necessary but the Plaintiff to prove that he was beaten with Swords Staves &c. But where land is taken on a collateral point arising out of the Pleadings: then it is not out of the pleadings & the issue. By the Defendant pleading traversing by saying the Plaintiff

Lilt. S 193 Co. Lit. 281 4 Rec. 53.

it in pleadings formal: here a traversing though good at Common Law: without it issue can not be joined. There is a more intelligible rule than the formal: this therefore may do not put in issue the circumstances of the pleadings transposing, altering places & omitting the circumstances were originally necessary to be proved as laid.

Bacon 4 p. 90 Co. Lit. 281

Then

then they are supposed to be a result of the first, plus second &c.

Special Force are of two kinds viz. Material and immaterial. The General Movement can be immaterial: Given Material Force is one taken in a point which may not receive the merely of a cause. Or of large or indefinite extent and degree, as Gravitation &c. is immaterial. The immaterial if one is not aided by Reason: by cause but a Concurrence and a rejection will not be regarded in favour of here other received such as Force. The Material Force is one not rightly taken in point of force. Then as it is material force is aided by the Reason. Hence, that an Effect cannot be joined on a negative Argument. If a Negative Argument is present a negative proposition which implies an affirmative and which will plead against the Reason.

Force of Material Force.

Pleas and Pleading

an affirmative, against money, an affirmative implying a negative. Thus suppose the Defendant pleads that since the date of the bond the Plaintiff has released him and the Plaintiff replies that he did not release him since the date of the bond: this replication implies that he did release him before the date of the bond. Such pleading is aided by verdict and is allowed on special demurrer. Mr. Bond indeed takes such pleading to be good, when the negative or affirmative implied in it is not sufficient to maintain what is alleged on the other side:

Ent 106. 203. 1 Rowl 88. Cro Jac 87. 3 Inst

The subject of General Issue will now be continued. This covers the whole Declaration: it includes a denial of all the Plaintiff's allegations, and yet in some cases the General Issue may under it lay the facts alleged and not intended to be denied: thus in such cases the

Plea and Pleading

Plea: 1. Gen. Issue. 2. Set off. 3. Tender. 4. Set off. 5. Plat. Int. 6. Mun. Ord. 7. Mun. Leg.

When a Contract through the alegation and admission of the Defendant is found the General Issue may be used. In Contracts it is a good Contract and a bona and has Distinct Ries and Ede is thus put the main Pleadings of Contract. Law Ly Plea generally denies the accusation through ignorance in point of fact. But when a Plea is made in its own nature, independent from any incorrectness, the General Issue is not a proper plea. For Issues at Common Law will not support the plea of Plea estoppel. But if the Plea is pleadable at Common Law, the general Issue is not a good plea. But if the incorrectness of the Alegation is not absolute but is qualified or partial, then a Contract is not a proper plea. For Good given by an Instrument of Record. Ly is not a good plea. Ly, in pleading, to answer in evidence because it is not consistent with the fi

Plea and Pleading

Non est factum? Denies that he ever did execute the instrument but the execution may be did, notwithstanding it is a fact that the mere denial ought to have in the cases of law courts before mentioned — There is a distinction between matter of fact and matter of law in the case of issues: Issue in fact arises upon a denial of matter of fact: Issue in law arises out of an affirmative and negative on a point of law: Another general rule is that if a specialty is made void by statute it must be pleaded and cannot be given in evidence under the General Issue. So in the case of Usury and the reason is the Defendant must support the Issue: In action brought on Deed by the Deed alteration account of Delivery payable taken advantage of under the General Issue and Plea of Non est factum may be pleaded: If much alteration.

Doe. 6 Geo. 1 Co. 119. Plowd 56.

Gilb Law Ev. 162. Stage 498.

Co. Lit. 79. 2 Bl. R. 108. Gilb. Ev. 163

Co. Lit. 119. Co. Dr. Co. 2 Co. 203

[illegible] by a change in the [illegible]
[illegible] part without the knowledge of the
[illegible] the Deed is not vitiated. But if the
alteration were such as a material
part by a change it would be vitiated
[illegible] if an alteration [illegible] made by the
[illegible] without the procurement
[illegible] the Deed
is vitiated. From what has been stated
upon this subject, that position of law
[illegible]

[illegible] the question
[illegible] the [illegible]
[illegible] in [illegible] the [illegible]
[illegible] of [illegible] in [illegible] [illegible] of
[illegible] platter [illegible] [illegible] of Deed
[illegible] in general [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
the [illegible] of an [illegible] [illegible]. The general
[illegible] being [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

Plea and Pleadings

that no question of law can arise and
the General Issue generally considered
is a general plea in England that in
action of Ejectment any thing which
shows that the Plaintiff had no right to
possess at the time of the plea pleaded
may be given in evidence under the gene-
ral Issue and this appears both to explain
and confirm what I have said so far as it
applies to the latter. Mr. Cowen thinks
his demurrer or general issue but he concedes
it is not so when applied to Trespass qu.
clausum fregit because although the reason
of the rule is plain for then the foundation
lain in the declaration is a mere question
of law the foundation is a mere legal con-
clusion of a party but in the foundation
is a mere fact, whatever destroys
that part destroys the foundation but in
case of express affirmative his other infer-
ence this Court thinks it ought to be the
rule proceeded. He admits that in case

Sh. p. 258
Stark. 258
Chit. 510
3 Dev. 1853
Bay. 487
2 Id. 1853

Debt

Bond to be
Satisfied
of Lost
Mod. Cir.
Cambr.

indebitatus assumpsit lies if express
words relate payment & money is given
and is evidence under the General Issue:
and this rule also applies to special
or express agreements: the rule applied
case in Lindsay v. Cook in the Exchequer
not can not be overruled it should be:

Indebitatus

but the remedy by action of assumpsit
is generally lost at other that the
Statute of Limitations, Bankrupt Act,
Power and Entitlement, and Bankruptcy
can not be given in evidence under
the General Issue unless action of assumpsit
but must be specially pleaded for
they are no exceptions of Law: But
that Bonds may be proved for
the relinquishment are proved under
of non Compliance Bonds and Pay
and by action of Debt on Simple Contract
but the Statute of Limitations may be
given in evidence under the General Issue
for the Statute comes directly with

Plead of
Bankruptcy
Bilan. 68.
Bicker. 98.

in

the issue of Nil Debet? So also to an action of Debt on Simple Contract, a release may be given in evidence under the General Issue under a plea of Nil Debet for the evidence supports the plea: But this can not be done in an action of Debt on bond, for this would admit the execution and proceeding in avoidance of it. The great criterion in order to determine whether a given Defence may be offered upon the General Issue is if the defence is inconsistent with the plea of General Issue, it can not be given in evidence under it. Because, it says: This is by no means a hard and unreasonable rule. In an action of Assumpsit the Statute of Frauds and Perjuries may be given in evidence under the General Issue, and this is done by bringing an Objection to the evidence. This Confusion of pleading allowed in actions of Assumpsit, is not allowed in England,

Ld Raym 505. Salk 278 Burrow 8 Cowp 263 note

1 Br. Ab. 90.

Hob. 174. Comb. 478. Bull. N. P. 17. 1 Part. 284 & mod. 282. England in actions founded on ~~the~~ ~~contracts~~ tort, any more than in actions founded on Specialties: So if in an action of Trespass the Defendant would avail himself of a release or license he must plead the specialty: and in general all matter of justification must be specially pleaded for it is absurd to say the act in his plea and then to admit and justify it by evidence: But this is an universal rule; that every defence which cannot according to the rules of pleading be specially pleaded cannot be given in evidence under the General Issue: In Connecticut there is a statute on this subject made for the benefit of the Defendant and which varies from the rule of the Common Law for the inconsistency of the Defence with the plea is not regarded here under the Statute the rule of

Cowen 111

Shows

applying to all actions that the Defendant may give in evidence under the General Issue any matter of defence or justification except given out of the Plaintiff which discharges his claim or demand for such act of the Plaintiff and not be given in evidence: It must be some act of the Plaintiff tending to release or discharge a cause of action now existing: Thus a release can not be given in evidence under the General Issue, for this is an act of the Plaintiff discharging his demand or claim: Accord and Satisfaction, Tender of Arbitration, former recovery of judgment for the same cause, can not be given in evidence under the General Issue. But the act of the Plaintiff contemplated by this Statute, is not one antecedent to the cause of action, for this may be given in evidence under the General Issue, even though it comes to a justification=

Plea and Pleading

So in Scotch Cases & Causes Regd.
of the Defendant would avail himself
of a Defence he may give it in evidence
under the General Issue: & also any
other act of the Plaintiffs which shew
that he never had any cause of Secession
or action may be given in evidence
under the General Issue: So if the act
is [illegible] as in an action of Debt
in Scotch Courts may be given in evi-
dence under the General Issue for the act
is not contemplated by the Statute in
which case one ap Pleadings his claim
or Demand: So Mutual Defences and
Counterclaims may be given in evidence
under the General Issue: & in case not
[illegible] by the Inferior Court of Chancery
and that Court could not be given in
evidence under the General Issue in case
[illegible] as a matter of Law but by Special
Pleas was received in the Court of Errors
in the Second State Court Convention 1800.

Plea and Pleading

In Connecticut the Statute of Limitations may be given in evidence under the General Issue: This is done in the case of both Assumpsit, Book Debt and Indebitatus Counts it may be Debt on Bond though it has never been attempted: the Cause of Action is not the act of the Coff. and this may be done in England: It is said by Swift that the Statute of Limitations can not be given in evidence under the General Issue, but this is not correct, and he assigns the Common Law reason that it contradicts the Issue: but it has been already ascertained that that criterion is not regarded in Law. Further in indebitatus Assumpsit, as well as in express Assumpsit the Issue of Non Assumpsit does not mean, that the Defendant never promised but it means that the Defendant is not liable to the Plaintiff at the time of pleading. If this is correct

the

3 Pun. 518
4 Dr. 6

Swift
2 vol

Stat. Ac
2.4

Dougl. 38
3 Bl. 63

the reason of Drift is not in point of But on the other hand there are certain acts of the Plaintiff operating as a Discharge of his claim which may be given in evidence under the General Issue: So in Covenant Debt, a release, may be given in evidence & so may fragment for this to be remarked that though the Statute was made to enable the Defendant to give in evidence such defences as he could not at Common Law yet it was never meant to prevent him from giving in evidence under the General Issue such defence as he might do at Common Law and this is the true construction of the Statute. The Learned Counsel Mr Pa Selcate may be given evidence to any action of indebitatus Assumpsit notwithstanding recital of the Grant of Money to the contrary: The Defendant may instead of pleading the General Issue select any Special

Cowp. 288. Cowp. 288. Comp. 288.

Bacon and Bacon 187

material particular traversable fact
an allegation to the gist of the action
and close to the Country and Demurrer
to the Remainder. This course is always
safe when there is a number of distinct
separate facts, each of which is necessary
to establish a right of action and a De-
murrer of one is a denial of the cause of ac-
tion leaving the other allegations all are ne-
cessary to support the action: This is cal-
led a Special Plea = A Special Plea
amounting to the general issue, is peru-
liarly inadmissable: a Special Plea
one alleging new matter = A traverse
of a single fact is not a special plea
the reason of the rule is, that if such
special pleas were admitted, it would
necessarily lengthen the record, and besides
it would lead to tender to the Court that
one fact, which ought to go to the Jury
E.G. In an action of trespass the Defen-
dant pleads saliter &c. that he was in

Phillips
Ch. Pl. 105
Lawes 35
Stephens Digest
Gould Ch. Pl.
Pleading 31 3

Place

Bell 22. 3 Burr 1801 Cowper 88 Doe 1 East 568 Doe 1 East 568

Matters are also where they ought to the General Issue. They is also matter of Fact: So he must, if a Release has been executed, it should go to the Court for they are to judge whether it has been a sufficient Defence: So in Trespass the Defendant pleads possession in him self: it is good: he should plead the General Issue. But to this rule there are some exceptions: A special Plea

Doe 1 East 568 Cowper 88 Doe 1 East 568

pertinent to the General Issue is good if it contains special matter of justification for the Matter of Law and ought to go to the Court. In the Common Law in notions of trespass and the Defendant may plead specially whatever ought to be General Issue, by giving colour to the Plaintiff: if he only pleaded

Bell 22

like to himself, it would be the General Issue and no more: The giving colour consists in alleging some defeated matter in favour of the Plaintiff right of action

Doe 1 East 568 Cowper 88 Doe 1 East 568

Plea and Pleadings

in order to justify an answer to it. Viz. a plea of the Defendants letters a Special Statement: But a special plea of title in action of tres is warranted in Country by Statute which says if a plea of title in trespass before a Single Magistrate it shall be tried by the County Court: they impliedly allow it. 3d The Judges may allow a special plea according to the General powers, even at their Discretion: this discretion is regulated by an established rule: The rule as expressed by Chief Baron Gilbert is that if the Defence is of such a nature as if it is so as to be found the Jury by investigating questions of Law which ought to go to the Court: but if it is merely setting forth facts it can never be allowed: ob: is the reason of the disadvantage of such pleadings some disputed facts arises: Some are in good cause of special demurrer: but some

Dunn 87. 126. 150

Stat 6th Victor. Ch. 3 sect

Br. Col. 87. Gilbert 69. 3 C. Bro. 2 Ind. 3 Dec 158

can

10 Co. 95.
3 Bac. Ab.
3 Mod. 18.
6 Co. 19.
Cro. Ch. 97
Cro. 122.
3 Mod. 94

as this be consistent with the Court power of allowing it at discretion for a Demurrer requires a judgment and a judgment in chief too: Either may lay up the ground of a question to the Court that the General Issue ought be entered on the record: they that Pleader taking to be the true rule: But perhaps the Court will not allow the plea in question and the Defendant will not plead the General Issue or enter a bad Verdict but prefer a Demurrer: here that Pleader perhaps judgment passed go against him on the Demurrer: To also after the Court have disallowed the plea of the Defendant Dr. and given in Demurrer, the

Cro. Ch. 122.

Plaintiff may take Judgment by bad Verdict: In Cro. Ch. the Pleader is to Demur specially and take Judgment on the in chief as on Demurrer: this opt. should prevent is through inadvertency:

Plea and Pleadings

Further in a material difference is - since a special plea a material to the General Issue and a special plea alleging facts which in evidence would support the General Issue for it is not necessarily or of course an admission to the General Issue. For if a plea of Release in an action on a simple Contract, be a good plea and it would in evidence support the General Issue yet it is not the General Issue. So Performance, Coverture, Death and Bankruptcy will support the General Issue by being given in evidence under it yet pleading Performance &c. is not pleading the General Issue. Bankruptcy in Bagnall will support the General Issue in action of Assumpsit and in Debt in case below = But specific difference between these pleas is this, a special plea - material to the general Issue is one containing a special statement of facts which contradict the material

Stile 175
3 Term Rep. 18
2 Term Rep. 88 &
Burr. 305.

fact

alleged in the Declaration: but in the instance we find that among that there was one a cause of action: it was sufficient to plead generally that the defendant was indebted to the plaintiff in the sum of £ for Goods sold and delivered: Tho' particular specifying particulars that appeared in the evidence: tho' particular specifying particulars that there was one a cause of action: it was sufficient to plead generally that the defendant was indebted to the plaintiff in the sum of £ for Goods sold and delivered: So in an action of assumpsit infimul computassent: so in an action of assumpsit infimul computassent: So Debt allow the application of a bond at the instance of a stranger: So Conversion according to the distinction, it is enough in Court to plead abstractly without saying that the original taking was by the plaintiff especially in Replying on a trover: the right in any of by the General Issue is enough without saying

Lt. Raym. 280. 2 Str. 1091. 2 Ld. Raym. 1497. 4 Burr. 1878

pleaded:

Plea and Pleading

There is another kind of plea, viz. one stating special facts leading to prove the General Issue and concluding with the General Issue in point of form: this plea is the General Issue: E.g. to an action of debt on bond, the Defendant plead that it was delivered to him not as an escrow to be delivered over to the Plaintiff on a certain condition, which Condition was not duly performed and so it is nothing to our deed. He may indeed plead "non est factum" and so in all cases: So in the case of Covenant that way consists the manner of pleading the General Issue: This is called the General Issue with an "Ignoramus" which is a Norman word signifying the Ignoramus

the General Issue in Law, and so it is not Ignoramus this plea conclude to the Country or with a Verificatur. Mr. Gould conceives it ought to conclude to the Country but

16th Lecture

Stat. 27 H. 8. c. 2. Co. Lit. 154 b. 1 Ventr. 9. 210

Hob. 6.

by

Plowd. 66. 1 Vent. 9. 1 Bac. Ab. note: Conclusion to the Country

by traverse the General Plea, indeed by concluding with a verification traverse the facts a special plea amounting to the General Plea and thus it is a different kind of plea from the General Plea with an issue but plea having every property of a special plea, amounting to the General Plea which is bad: This mode of pleading is prejudicial to the Plaintiff in giving him notice of the law alone and confining the attention of the Jury to the particular facts stated: This plea may be compared to through it concludes to the Country: for the conclusion is from facts said to be, a bar, and whether this a sufficient answer or not ought to go the Court: but this is the mode in County Court, yet it seems questionable

Doy 112. Gilb. Ev. 1645. Plea concluding with a verification

Cro. 2d Ca. 153.

but Gilbert, and Eitz: Accordingly it is the practice in and of Courts of Record in case a Plea may be argued in

the joist of brown but some more expen-
sive of presenting extensive as Coverture
or because as by means of joist Joists or
interrupting the Pavement in floor
without should Joists more fastened
Both Bear all such floors or pla-
tform are inflexible as that of the
two floors fastened on the Bolsters
then form of General floor.

Of Special floors in Bar

Sewing floor in Bar

Clean to the Bolsters and of the Second
floor the are special floors in bar.

A Special floor in bar is retained to la
are which consist the Joists as slates
of the Partitioning but every thing dep
ends matter. But the thought generally
i not universally true: for sometimes
such a special floor however forms
part of the Partitioning. E.g. of a two
floor the Second floor a relaxed to
the next Bearers that the are considered
as a length over the whole.

Fig. 2.

Joist 12 in. Bar 30 in. Bolsters 18 in. Lower 13 in. 18 in.

Pleas and Pleading

There is a species of special plea in bar or rather a mode of pleading in the form of a plea in bar which does not admit the facts going to the cause of action and this is the defence here attempted. Pleas in abatement are generally used to convey a more limited view of what prevents the Plaintiff from bringing or prosecuting his action. The pleading of the Plaintiff by some form or other states the facts claimed to constitute his cause of action. The defendant may interpose a plea in bar but does not admit any of the facts alleged & this does not amount to the definition of a plea in bar does regularly admit all traversable facts or allegations in the declaration which are not traversed by it and is always in avoidance of the facts in issue. Get therefore it is generally the Defendant's best policy to traverse the allegations which are not traversed by the adverse party plea of facts inconsistent

Saunders 33 Doe 140 Pitt 161 170 5 Ph 6 308 3 Bos 3 6 Willes 13

Salk 21 1 Ch Ca 13

[illegible]

[illegible] only the [illegible] [illegible] [illegible]

Plea and Pleading

Lawes 158
Cowp. 575
2 Jac. 772
2 Burr. 1765
Gould 38
3 H. B. 309
" 310

issue is tendered the adverse party must have an opportunity of answering it either of these ways, viz. either by traversing the allegation in the commencement or them or by confessing and avoiding them by new matter. This is the established mode of taking the pleading [illegible]: There is indeed introduced into England by Statute 5 George II a special plea of Bankruptcy concluding to the Country though consisting of special matter.

Lawes 145
8 24. 227

But a plea which is merely in the negative, need not conclude with a verification, since the party alleging is not bound to prove it. Yet pleas, which draw in a complex [illegible] issue, must conclude to the Country. When the Defendant alleges several special matters to several parts of the Declaration he must conclude at the ending each with a verification of the whole, with one. [illegible] Bull. on [illegible]

[illegible] 5
Lawes 145

[illegible]
[illegible] 48
[illegible] 88
[illegible]
3 H. B. [illegible]
[illegible]
[illegible]
[illegible] 158

Contract

Pleas and Pleading

Contract the Defendant pleads payment as to part, accord and satisfaction as to rest, and a plea as to the rest, as he may plead he may another each with a verification or he may do with one. The affirmative taken the Defendant always is a record nisi and special plea to special matter as of course what is very not issue and to all plea: Hence "Nil Debet" is not a good plea to Debt on bond, for it admits the execution of the instrument, and advances nothing in avoidance of the duty. There are some general requisites to be observed in order to good pleading: Lord Coke's General rule is "that every Defendant must plead, such a plea as is pertinent and proper, according to the quality of his case, facts & circumstances he may have to plead a good plea." But certain rules more definite must be observed: I. Every special plea

Hob. 33
" 330
4 Cru. 89

Hob. 88
" 313

Plead

cannot contain [illegible] (or other) matters;
because they are partly not triable. To
exemplify in an action on Contract the
Defendant [illegible] pleads that he was
2 Wil 28. [illegible] without [illegible]. by law
not triable and is not demurrable [illegible]
because [illegible] not triable by jury [illegible]
is not [illegible] in which
fact and law are to be tried. But they
can not be separated [illegible]: e.g. in an
action of Trover or Trespass for carrying off the
Defendant should plead that he was
lawfully entitled to the goods of all felons:
here the first part is law, for whether he was
lawfully entitled is matter of law; he
Lucas 18. should plead the special facts that he
is lawfully entitled to the goods of all fel-
ons. III. A very important Rule is that
the plea in bar should answer the whole
[illegible] cause of action [illegible]
[illegible] the whole [illegible]; in an ac-
tion for an assault and battery and

Imprisonment

Allen and Hardy

proceeding the Defendant demurs, satisfy
ing the plaintiff and stating the plea
[illegible] for the Defendant
is not allowed to select any trivial plea
Defendant and accordingly that only for
if he pursuit or pursuit he might avoid
and so dispense with observing
the order: The circuit answer the letter
or mandate the present matter is fatal
which ought, being based on the Defendant
and on the proceeding: So in case of
a certain pleaded the case action of
trespass lies in bad without a breach of
the trespass, [illegible]
So in case of a [illegible] the present breach
of trust by [illegible] the Defendant
demurrer is filed the Defendant and
[illegible] with [illegible] [illegible]
[illegible] upon [illegible] the [illegible] [illegible]
the [illegible] [illegible] also [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Cr. El. 268
Cowp. 27
Bled. 213

Fitz
Comb.
Trust
Saunders
2 Ld. 211
Ld.
Raym. 1095

Pleas and Pleading

Hob. 98. exchange as to the carrying them but they
was not returned to the act of keeping them
one day but for a [illegible] answers the whole
[illegible] — so in an action for slander
for saying a [illegible] was a thief [illegible]
the [illegible] [illegible] to [illegible] [illegible] [illegible]
that [illegible] [illegible] [illegible]: this is bad but
[illegible] [illegible] [illegible] the [illegible] as to the Def.
[illegible] [illegible] 46 If a specific charge is [illegible] the charge
[illegible] [illegible] specially [illegible]. On this rule
it is not required that the Defendant
should answer the whole [illegible] in
[illegible] [illegible] [illegible] [illegible] [illegible] as to
part and another as to part. E.g. in an ac-
tion of [illegible] [illegible] the Defendant
may plead not guilty as to part and a
justification as to the residue. So he may
[illegible] a part, [illegible] to a part
and [illegible] to the remainder: but [illegible]
[illegible] [illegible] [illegible] a complete an-
swer to the whole [illegible] [illegible]
[illegible] — another general rule being

[illegible]

also in all the subsequent pleadings so the whole gist or substance of the pleading has merely to answer the replication by insisting that it is sufficiently answered or the defence to it quite relevant. But with regard to the idea of such no and answer in these general terms the distinctions should be noted. If the fact alleged to be an answer to the whole and is in truth an answer to only a part the Plaintiff should account for the insufficient for the whole and the pleading to the whole. But if the fact be in truth an answer to part only and is in fact a defence to part only to a discontinuance and the Plaintiff should not demur but take judgment by a Nil dicit. If it had been in truth only an answer to part of the Plaintiff's demand, he discontinues his action because he accepts an insufficient plea. There is a good and fundamental

Bacon 28 a de 1770 4

Bacon 28 note 5 Bacon 1.95 2 Ray 351 Str. 1.95 3 Lotte 1.8 4 Brown Pl. 1.84 Bacon 135 " 136

evidence on the trial with the foregoing plea but it seems to the Court, it is incumbent to be any reason to hurt, or good reason for taking judgment by the Plaintiff [illegible] a Plaintiff demurrer to a part which if pleaded to the whole would be good as to the whole that would be in the the Plaintiff should take judgment by Nil dicit be rejected on the Demurrer. Notwithstanding the preceding rule this is true that a justification as to part of the offence, which covers the gist of the action covers the whole grievance and is of course a justification of aggravation. This is an answer to the whole declaration. B. R. Trespass for breaking and entering the Plaintiff's house and ejecting him therefrom. A plea justifying the breaking and entering is sufficient for ejecting him is matter of aggravation being the Plaintiff's remedy under a formal assignment in his Replication.

Clear and Plenary

Replication. A Penal or Penal Assignment is defined to be a power for breaches stated in the Replication of something stated generally in the Declaration: by the nature of a new Declaration. Such of the three the same of the pleas before stated: Now if the Plaintiff wishes to rely on the Assignment as a distinct breach, and a substantive ground of recovery, he must do it in the replication, by way of Novel Assignment and to this the Defendant can plead as to a new Declaration and the General Issue or not guilty to trespass &c. or any other plea which he might have pleaded, had it been the only thing contained in the Declaration: The Office of a Novel Assignment is to take out of the plea in bar something to which the plea in bar is the Defendant pleads in performance has a good answer. The Novel Assignment

3 Rep. 90 b
" 63 b
" 67 b
1 Ld. Ray. 335
3 B & C. 311
3 East 70
1 Saunders 28 note 3

3 East 374
" 499
Cowp. 165
1 Saunders 299

17 Petersdorf Digest

[illegible] always maintained the [illegible] argument that the troopers were in no [illegible] from that operation on the place on Sat. or other occasions. But they contended in the justification of Capt. Sheppard's conduct, that the troopers for the day and the Defendant should follow the General flow of the country. And there unless it appears in evidence that the troopers are protected, the General objection cannot be overcome. And the Defendant will stand or fall on his General flow. It was accordingly proper for the Defendant to rest doubtful on all the fundamental General Assembly of our State, consisting of obscure matter of evidence: For general pleasing is sometimes allowed to warrant a verdict, and the rule is as expressed by Lord, that where the particular facts of not doubt would tend to injustice

1 Saunders 99. note

vide Farrer 100 f. 211 for found Jones opt

1 Hutt 99 Sto. 134

Plea and Pleading

Infinitive day to be at peril of pay & pleading is allowed: D. where covenant is to show performance & breach of the performance of which it can never have a good ground of day be necessary generally in the case of an Sheriff have of incumbrances &c. to be specially the D. bound not to show performance specially & every action which ~~[illegible]~~ do twenty years but be barred generally. So if a Bond and covenant to deliver up lease day lies to the Obligee for twenty years: here pleading performance generally is sufficient. But the general plea of performance can not be pleaded to an action on Covenant, where around the covenant are affirmative: for affirmative covenants can not be performed: Where are covenants not to do anything, the plea should be that the Defendant did not and the act should be commit-

1 Bacon Abr 3
110 note 3
Petto 195
Br. Ed. 749
Cro. 215
Ro. Ent 256
Co. Ent. 5 4
Lang 160
" 61

Cr. El 691
Co. 305
1 Rust 305
11 Rac. 91

ted

[illegible]

[illegible] [illegible] [illegible] [

Plea and Pleadings

Plaintiff's counsel to pay in a special
special point. Plea authority in accordance
of Court. The Plaintiff's counsel stated in
his Declaration that on the 1st day of
October 1806 he left his gown and that on
the same day the Defendant borrowed the
same and the same day the same gown
converted to his own use. This would be all no
Material Damages but the gown was borrowed Saturday
in October. Court. It is not covered by
Pandects. But the law states that he left
and the Defendant found it in Pleasan-
ter and afterwards sold in October the
Defendant converted to his own use. This would be
good action if proved for October would
be reputed a recent transaction. The
Opinion of Attorney General is good.
In the Court of Exchequer and Ex- Saturday
chequer Special Pleading in Order in 1806 to
Principal Authority.

Pleas and Findings

Defendant:

A Special Verdict is a Special of facts including facts alleged in the pleadings and although the jury are sworn to find the facts contained in the pleadings including the Declaration: Yet Judgment of Dismissal may be given on Special matter alleged: the pleas cannot be taken to the General Issue

When a Trespass is preceded by special matter by way of inducement it is called a Special Trespass. this is not out-of-date the General concluding for a general Trespass is presumed often they be an inducement: A Special property is called a usually taken with the Long "Whereas here" "without this": and concluding with a verification: The said is a fact by that a Trespass when specials taken always obey the issue: this is clearly incorrect: a General Trespass may not necessarily obey an issue:

[illegible] Pleading

[illegible] traverses [illegible] plea, [illegible] in Assumpsit the [illegible] the [illegible] form of a technical traverse and conclude with a verification, (with a verification) but a verification is [illegible] the form of closing the plea. Thus [illegible] the Defendant [illegible] in his [illegible] that they have [illegible] in fee, the replication is that he [illegible] that he [illegible] in fee, with a verification. This is a common technical traverse, but the traverse does not [illegible], or [illegible] from the plea but merely [illegible] the plea. The issue is then tendered by the Defendant's [illegible] that [illegible] did [illegible] in fee [illegible] as he had before [illegible] in his plea in bar.

Lawes [illegible] 87
Steph. Pl. [illegible]
1 [illegible] 391
& [illegible] 129
[illegible]

These words "absque hoc" are words of strong denial in the law but they are not indispensable to constitute a traverse for [illegible] that the [illegible] constitute a traverse. "[illegible]

1 Saund. [illegible]
[illegible]
[illegible]

[illegible]

Lawes 154
Steph. 57

"causa" refers to all that is alleged on the other side. [illegible] a special [illegible] traverse concluding with a verification. But a general traverse which [illegible] the whole of what is alleged on the other side concluding regularly to the Country. Hence the verification [illegible] the conclusion is to the Country. [illegible] defendant to an action of assault and battery pleads son assault demesne, there is a special traverse in reply to that plea viz. "de injuria sua propria absque tali causa" there [illegible] are several precautions of the whole [illegible] joined and the general conclusion to the Country [illegible] [illegible] between the conclusion of a special traverse, which is with a verification and a general one, which is to the Country [illegible] special one ought to conclude with the verification [illegible] cause. 1st It may be an immaterial

[illegible]

issue

Plan and Drawing

Land was at so low a price, it might not be worth while to pick it, because the planting should be left open, but the price against which the tracer is proceeding abandoned or given removed. So it might not be necessary to the Country to retain every where the tracer is relaying the arrow points may pass by allegation, and take a transfer from the individual himself, which he could not do if it were to the Country: consequently a special transfer would be considered with a caution.

But in the case of a general transfer it certainly was not to be unnecessarily for cause it peculiar the value of what is at stake on the other side: and so the proceeding was put to left open. It is also displeasing to observe a general transfer was take place generally because it remains the other practice was it is a case of the alternative allegation and then

then

Pleas and Pleading

[illegible] every part is answered without being
guilty of a [illegible] it should then
be [illegible] [illegible] therefore
[illegible] and [illegible] as there is
[illegible] [illegible] to the conclusion of a plea in a-
[illegible] [illegible] be pulled on the
[illegible] [illegible] that a General
[illegible] [illegible] [illegible] conclude to
the country with a verification or to the country
[illegible] [illegible] assigned is that such are the
precedents; there is no reason, nor prin-
ciple for leaving the pleadings thus after
a General Demurrer unlikely to be a prece-
dent: A special demurrer [illegible] conclude
to the country but no reason can
be given why a general demurrer should
conclude with a verification unless it be
[illegible] that the pleadings should be left open and
[illegible] the [illegible] of [illegible] can never re-
quire it in case of a General Demurrer;
but it [illegible] that [illegible] may be
[illegible] the case above mentioned [illegible]

general

Pleas and Pleadings

Pursuant to an action of assumpsit [illegible] [illegible] plea "Non assumpsit" [illegible] that the plaintiff made the demand [illegible] the plaintiff [illegible] the whole [illegible] the same [illegible] with a confession [illegible] the [illegible].
But what is the use of this [illegible]? The plaintiff [illegible] and [illegible] [illegible] [illegible]. But [illegible] [illegible] [illegible] [illegible] [illegible] only in [illegible] cases, where it has been [illegible] by [illegible] [illegible] [illegible] to be:

Technical Statement: A technical [illegible] consisting of the [illegible] [illegible] differs from a [illegible] one, [illegible] [illegible] of facts, not only in [illegible] but in the [illegible] [illegible]. [illegible] [illegible] is a [illegible] one [illegible] [illegible] in [illegible] a general one [illegible] only in form and not in [illegible]. The [illegible] [illegible] [illegible]

Technical Statement

Lawes, 17

at

Pleas and Pleading

[illegible] is bad in the proper matter [illegible] the party traversing the [illegible] new matter. thus where one defendant pleads a statement that he [illegible] came [illegible] and the Plaintiff replies that he is a [illegible] & alleges that he is not. this is a technical traverse, but instead of this the Plaintiff may reply, by a direct and positive denial that he is not [illegible] and conclude to the Country. Or again the Defendant pleads accord and satisfaction, the Plaintiff replies [illegible] new matter and conclude with a technical traverse, but it is not necessary to allege new matter, the Plaintiff may deny the [illegible] and conclude directly to the Country. Or this technical traverse differs from a direct and positive denial in form. [illegible] be concluding, for a direct and positive denial always conclude to the Country but a technical traverse always

concludes

Pleas and Claims

conclude with a verification: they in a Plea of Usury, the Replication goes on a Certain consideration & Judgment that it was corruptly agreed & claiming the Forfeitures by with a verification but the Plaintiff is not bound to state the Consideration of his Money positively or directly only by saying that it was not corruptly agreed, and they demur to the Bounty: it has been the first Order, but not conclude with a verification how is the Consideration alleged in the Bill a good consideration. This mode of traversing a fact positively but by way of positive and undoubtedly, also in which more other answer is given to the relation of what is alleged in the Bill. It has been a subject of much controversy in the Courts whether a wrong one claim in the case is matter of Answer or Plea? In General a general rule should include the Bounty.

Plea

1 Ba. 57.
3 Ba. Ref. 98.
2 Ba. 112.
1 Ba. 30.
2 Ch. Ca. 135.
Eq. Ca. Abr. 149

2 Ba. Cas. 320

In Bull 96
Stats 206.
7 Cranch 285.
6 Ch. 119
2 188
2 Sch. 190

have sufficient in general terms which might reasonably be concluded to the Court by should conclude with a conjecture if this a defect in form or in substance? In Treasury Cases it has been held to be a defect in form in Trespass the Court were doubtful deciding whether by strict special construction. In Mr. Field's wrong conclusion appears only a defect in form. The principles in law no difficulty in deciding this question. And so by the rule of law there would have been any lost the science of pleading, always been construed as a correction of systematic principles. It is not objected to this conclusion that enough has been said, it is that he has not traversed all that is material, but only that he has not said it in a right way, or that he has not concluded his traverse properly. This is mere form. Then the Defendant has pleaded what is sufficient in a wrong way.

Over and Pleading

by a jury a formal & technical statement of facts which is in reality an opinion or inference.

There are two modes of carrying an attachment: 1st By a technical trustee: 2nd By a party of a fraudulent nature. Further when an attachment on one side is actually served on the other, by means of a direct and positive service, a formal trustee supervenes is rendered impracticable and dangerous: for if permitting the plaintiff and defendant are in confederation: 3rd The Court of any jurisdiction of a contingent interest the defendant expects receive a considerable influx and operation on a change of performance with an accession or disaster: In the Principal and in his Declaration that he has arrived to the age of twenty one years, this right function being treated accordingly the

Defendant

Before

2 Salk 89
Lutw 157
Cro El 185
1 Saund 24
Tho Raym 75

Defendant pleads that he has not and cannot that ayd here is a complete fine levied and a bar is conveyed to the estate he should have concluded directly to the Country then for the general nature of a trespass, with the manner of its conclusion: Now is understand when it is necessary to take a traverse, and when it is more difficult: By general rules where one party alleges new matter which is inconsistent with any of the antecedent allegations on the other side but which does not formally issue, a traverse of that allegation is not only proper but necessary: E.G. the Defendant pleads that John Stile, died seised in fee, the Plaintiff replies that he died seised in tail: this is bad pleading, a regular issue is not formed. He should have pleaded that he died seised in tail. Allegations how that he died seised

Pleas and Pleading

in fee: or if an person in possession
was made at the date of the deed: Plaintiff
replies that he was seized above
twenty years & the defendant. The
same matter which precludes a tenant
in tail from the immediate right of the
Donee and heirs that from being disseised
in fee also that he was disseised
seised in tail. This new matter prevents
the disseisee from the immediate
and that it will be to bring the disseisee
the traverse: The object of the last rule
is to compel the parties to come out if
any on what each one has alleged inconsistent
with what he has proved: But
the rule that there must be a direct
and positive denial very that there
must be a regular affirmative and
negative is both universal and has
been relaxed in the same time: If the
Plaintiff avers in his Declaration that
Johnston was born in England and the
Defendant

Defendant should be a very large
person and he should be by
profession a Doctor or a Philosopher
and if the Defendant proves no Record
the Plaintiff may open the Record and
Pleas a Bench but may not have
the Office. And it is true that they ought
to have been by the Court but where
that which is affirmatively alleged on
one side is inconsistent with what is
affirmatively alleged on the other the
Jury can in no case be true: therefore
in matter whether there is a direct
affirmative and negative or not: they
are negatives form be tried into Pleas
Jury, and by contrary Jury Pleas
being in contradiction. The general
rule that where a party alleges new
matter inconsistent with the
allegation on the other side, a traverse
without the "prevaricate" may not lie
where the party who alleges new matter
has

Dawes

Plat. 6.
p. 82 pl. 111.

inconsistent with the allegations in the plea, yet takes the issue tendered on the [illegible] where he alleges breach of the negative or else all [illegible] being to have made known to him in the [illegible] and then there is an action of Debt the Defendant relies on the breach of [illegible] and he must plead it specially with [illegible] and with particularity of time and place [illegible] ascertained by the Plaintiff. [illegible] the general plea [illegible] all this he must plead [illegible] been given by a bond of Probate and his petition is that the administrator should [render] an account. The Plaintiff alleges a breach that the administrator by the Defendant has not rendered his account. The Defendant can not plead that he has rendered his account. He pleads that he did not render it or that he has rendered it &c, and concludes to the country: If he takes the affirmative side

of

Pleas and Claims

of the Plaintiff's Counsel from the
Plaintiff's. The special Counsel's Argument
has been strongly followed by an
affirmative reply. What does
they consist? It is not that a Regular
claim cannot be brought with an Argument
but it substitutes a simple penalty con-
fession and assumes impossibility what
is alleged on the other side: a transact
is just necessary for proof: for what
I allege is not in fact a fact in
consistent with what they have to
allege on the other side: if this was
allowed it would accumulate pleas in
confusion. Thus to an action on a contract
the Defendant plays defence: Defence
tried, a defence after fact ago: here
has Plaintiff can not transit the plea
of Infancy. Argument has that he was upon
the age of twenty one years for he
has not counted it: Against that the
Counsel stress, a plea of the Court

Lawes 187
" 188

fraudulent representation that it was obtained per fraudem: he cannot take advantage of the fact that it was a release for he has impliedly admitted it by alleging that it was obtained per fraudem that in these cases the ratification of the contracts were made most emphatically with a manifestation without a transfer: before a formal transfer is made an election has to be made by the plaintiff for to affirming and adopting the transfer and repudiating the bankruptcy: then the plaintiff petition that fellow Stiles and Bell in fact in bankruptcy and for and before in his representation of one of the bankrupts himself whom the bankruptcy judge and official trustee have to sue for the plaintiff has to affirming and adopting the fraudulent transfer made. Mr. Pierce argued by Lord Bolton pulling out that an fraud found when an absolute nullity

Bell 309 Bankr. Law Bankr. 99 21 March '88

Bell v. Gen. Dist. Bankr. Law 149

Bell 196 Bankr. 88 note Bankr. 91

to have an affirmative allowed. The meaning of the rule is this, that a negative can not be answered with another [illegible] the duty of [illegible] [illegible] of the [illegible] [illegible] the [illegible] negative, and to follow them with another negative would be to say that John Stiles was present on the, & negative that he was not not present [illegible]. Upon the principles of pleading it seems [illegible] to matters of [illegible] [illegible] without an [illegible]; but the party is bound to allege and prove the [illegible] matter [illegible]. It has been a question, whether the omission of [illegible] [illegible] necessary [illegible] matter of substance or of form. Lord [illegible] has given [illegible] thinks it a matter of form [illegible] he has [illegible] a sufficient [illegible] [illegible] a breach, and has [illegible] [illegible] it with a breach, he has alleged sufficient and the defect must therefore

Lord [illegible] [illegible] [illegible]

be

to in power of the Defendant to have
avoided the Casualty happening by
independent a reasonable care in driving
in a Direction by his plea it has
been held by an opinion under a Special
Case stated before stated that
unless a party driving in horses to pass
appears to have not helped it: but ex-
tends to an unavoidable to transport
by a Carriage [illegible] there could be a
Damage upon a Carriage: On a Carriage
upon a Carriage is agreed that if the
Carriage has turned a restriction through
the other party can not have it and
cannot neither upon the Defendant
to the same point they to the same con-
tinue ground of claim or defence: In
certain pain in the B.P. the Defendant
pleads that John Tilly was placed in
fear the Plaintiff replies that he was
placed in fear Tilly alleges how that he
was placed in fear: Now the Defendant
demurs

Demurrer

Floors and Flooring

[illegible]

[illegible]

Plea and Demurrer

replied, as the transit falsely made, viz:
That a transit after a transit of one
article does not go to the same principal
ground of claim or defence in the
same plea and contract by the first
transit: to the second plea of trespass the De-
fendant pleads a release and transfer
and trespasses after the release given: and
the Plaintiff sues through the release.
The Defendants pray all the time, a
and the date of the writ: the Plaintiff
sues pray that he avoids the release,
or joins issue thereon: the release is re-
litigated to the transit: the transit
comes and replies concerning after the
date of the release: release and trespasses
committed before its date: & the Plain-
tiff pray the execution of the release, as
transit the Defendants witnessed to
a transit and they in a transit after
a transit: & the defendant Hardes-
ty offered the present transit and they
pray

[illegible]

[illegible] all of them.
How the Plaintiff may either join in the
trespass or he may sever the facts of a fresh
ground of the [illegible] trespass the last
trespass he may not charge the same round
as by a trespass after a license; if the
Defendant proves a license, it must
justify all trespasses committed before
and after the license given: they have
in order that they may be another
case with his Declaration: but if
the Defendant has no license: then if
the Plaintiff is not allowed to prove
the fact of a license he will be
out of his right therefore he may sever
the trespass the license: the first is a trespass
after a trespass because it does not go
to the first cause point: there can be no
distinction between a trespass after
trespass and a trespass where a license
exists: that now last and why a tres-
pass after a trespass cause and is a
second

Plea, and Pleadings

necessary to be ascertained. If a tra-
verser can disagree the precise point in
that issue on the other only not joined
this can very not allow a probability of
prejudice or alteration, arising to the
case if a traverser, from a knowledge
allowed to be made, that there are
not be a traverse where there
are two exceptions. Where the first tra-
verser is taken on immaterial point
it may be abandoned and another
traverse taken on a material point
because the first traverse could not be
made the last, therefore the adverse
may abandon it. Contested in part
cannot join in an immaterial
traverse. It may be demurred to, or
a plea bad immaterially. But this
is a traverse upon a traverse because
it gives the self same point in the
same ground of claim as defence
to his plaintiff recovering in trespass

Hob 104
Vent 115 &
1 Saund 82.
Co Ent 99
1 H Bl 395
" 406
1 Saunders
on note

that

Clerks and Pleadings

that the defendant fell and broke his
legs and the defendant knew that he
left them for repairing and did so
draw them, adequate, that he did
them. This is an innocent trespass
for if he did not pull them, he was
not future that he is entitled to an
amendment to the trespass is proclaimed
and therefore the Plaintiff may be
fully that he is in his pad of Action
for that he bestowed them in be
fairing. Hence the Plaintiff is not
bound to tender a new trespass than
the former trespass, but he may de
mand to be absolute.

2. When the trespass has to have been
committed in the County Shirley in
which the action is brought but the
hereinafter [illegible] indictment
that it was committed in the County
of Prince George, will be alleged
for that the commitment is the same

of Charity here the Plaintiff may re-
traverse the trespass covered though ma-
terial, and traverse a trespass upon the
point of justification. This is the
case where a Prisoner sues the Sheriff
to recover damages from [illegible] proceed-
ing of foreign county, which may
[illegible] to avoid the jurisdiction of the Court
in transitory action. If the Plaintiff
could not deny the justification, he
would be obliged to come to the Court
and then lose his action, by having the
same [illegible] A. sued B. in an ac-
tion for Assault and Battery committed
in the County of Surry, B. pleads that
he was a Sheriff and by virtue of his
warrant [illegible] his office arrested the Plain-
tiff in the County of Essex [illegible] Plain-
tiff [illegible] that he was guilty that he was
guilty of the Assault and Battery in the
County of Surry [illegible] a general issue
[illegible] the matter alleged in the [illegible]

Upon [illegible]
Co. [illegible]
Ch. Pl. [illegible]
1838

continue

[illegible] Pleadings

Declaration in the nature of [illegible] [illegible] in the [illegible] with that to which the [illegible] matter of justification [illegible] [illegible] [illegible] it, where [illegible] the Plaintiff is entitled to recover for as much as the [illegible] [illegible] [illegible] that part of his plea which is [illegible] the part of the cause of action [illegible] to the [illegible] of the [illegible] [illegible] [illegible] John [illegible] in an action on Contract on the case for [illegible] Davis pleads payment of [illegible] and that the Plaintiff ought to be [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] for the [illegible] by the [illegible] of [illegible] that the Plaintiff [illegible] [illegible] out of his [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in the

the

[illegible]

other [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nothing [illegible] [illegible], that [illegible] if [illegible] [illegible] what is an answer to something [illegible] by payment to [illegible] [illegible] [illegible] in the case [illegible] [illegible] [illegible] [illegible] not [illegible] [illegible] and [illegible] would support the Declaration. But in the case of the [illegible] & the cause of action is entire [illegible] the Defendant should plead that as to [illegible] but [illegible] he [illegible] in an action [illegible] [illegible] and promised to pay [illegible] as to [illegible] he has paid it. [illegible] an action of [illegible] the Plaintiff charges the Defendant with having obstructed three of his ancient lights. The Defendant pleads a justification as to two of them [illegible] [illegible] with a [illegible] [illegible] [illegible] that the obstructed [illegible] [illegible]. This is ill. For if he could so plead the Plaintiff would have no damages [illegible] [illegible] and the Defendant would [illegible] the [illegible] the

Plaintiff

[illegible]

[illegible]

[illegible]

[illegible] Pleading

therefore the parties are at issue upon that [illegible]
has no conclusion. A protestation is
[illegible] being out of abundant caution
to save the acceptance of the truth of the
inducement, to prevent the effect of those
matters in any future controversy that
may arise. A protestation must be brief
[illegible], is an exclusion of a conclusion [illegible]
but a protestation is no part of the plea [illegible]
[illegible] it can answer no purpose [illegible] [illegible]
[illegible] demur on [illegible]. [illegible]
[illegible] can not be [illegible]. But the
party [illegible] a traverse admits of
course what he does not traverse, but he is
at liberty to say what he pleases therefore
his omission to deny any fact amounts
to a confession. And nothing [illegible]
[illegible] can be on record which is not in
the denial or confessed. Hence the rule
that the pleader should deny all that is [illegible]
necessary to destroy the other's right, only
then may be [illegible]. But [illegible]
[illegible]

avoid the consequences of any allegations not brought, so far as respects any future claim by a protestation: A protestation does not allege the party against whom it is made to prove the truth of facts asserted against, for the nature of the truth is to be represented in the principal case. It only prevents the second case being used as evidence against any future party after matters to which the protestation relates. A protestation is the only method of bringing these allegations which cannot be put in issue: The instruments to bearer, can not regularly be put in issue, and therefore to can regularly be denied only by protestation. But any [illegible] in the protestation, not points the fact, but the protestation is not set at the pleadings strictly therefore: the fact is a collateral thing from the protestation. The form of the protestation

2 Bro 1095.
3 Bl 511
" 312
Peat 191
Protestation

Cowper 481
Doe v Pye

Plea and Demurrer

Indictment and a plea shew the two things to be different totally, but the adversary seized of a hereditament in this the Plaintiff's Ord. count, bottom that such a Deed allegating and Lawyer 1492
and bring for the plea sort of

the general protestation was not a Protestation
while the party of the Plea is general against being matter which might be evidence by protestation, will it not protected against, and in the party Lawyer 1493
though the plea be found for him.

A traverse can not properly be taken only in a material issue and decisive of the cause. If the traverse taken was in a material point the merits of the cause could not be tried. Therefore a traverse taken in an immaterial point is immaterial as the subject of a Special Demurrer. The Defendant's Counsel was thereat

feat

Barn. 118
6 Co. 24
Cowp. 521
2 Saund. 328
1 Bo. 110
note

subject of an action of trespass. That by the statute of Queen Elizabeth the defect in form and it can be taken advantage of only by special demurrer. The effect of pleading is to bring the parties to one point. A traverse must be taken not only on a material point, but also on an operative point. Immaterial points are not in issue. There may be a material fact may be evidence to prove and be that does not operate: but it is not every material point that can be traversed by a plea. The allegations must be traversed. Form as is not traversable. Why is it argued the plaintiff pleaded that in consideration whereof the defendant promised and promised this is not a traversable, that the consideration can be traversed. Matter of law however material can never be traversed, as matter of fact.

for

Plea and Pleading

matter of law is often inserted in the Pleadings: so generally a matter of inducement; and also matter of aggravation ought to be omitted: for otherwise ought the gist of the action or any ab matter of aggravation: yet in evidence they ought both be proved: & because the gist of the action is sufficient of given evidence, matter must be taken and stated positively upon a single ground of claim or defence otherwise by prevarication and doubtful and is therefore a defect in form.

Duplicity, contain any pleadings ought to be avoided as unnecessary prolixity and in strictness inadmissible. A bravado more than one point is not admissible but they point must not consist of a single fact: indeed it sometimes happens that the ground of claim or defence may consist of a combination of facts either of which

Mary

Cor. Pl. 201
Cro. Ja
" 61
15 Jones
94. 83
3 Mod. 120

Section 165. Code 120.

may repeal the action. They must be a plea of strong or weaker facts may be set forth as the nature of the injury demands. Into the defendant's mind, based on all the facts, and only and while there will be but one ground of recovery. But if the defendant should plead to an action on a contract a tort and fraud, the plaintiff ought to prevent to publicity, but he could not transport both in his pleadings. Upon a ground of injury from one kind of wrong, defendant may, by pleading, and should the other injuries in respect, publish the defendant plead one second as a satisfaction of one, but both transport they let go to an attitude and return. Now the plaintiff offers and transports his transport all, but to the second and satisfaction, second, a transport and another transport to publish the other

Section 166. Code 120.

Plea and Pleadings

The two points are material either to be brought at the election of the parties but both should not be treated, unless material of fact is necessary: Another general rule is, that pleading except what is alleged can be traversed for a traverse is a denial or negative fact is affirmed on the other: consequently nothing can be denied or traversed but what is alleged or necessarily implied: thus in a trespass by paid, that the corp of Devise in occupation impleaded and is wrongly traversed. 5 Co 5 Coffin's case. Action brought in a place where vehicle is within the Estate of Lordship and Manor, the Plaintiff suing as the property, without stating matter by in mention or not the Defendant can not prove that the Plaintiff ought to be barred, although that it is in dwelling: Generally and all depend on the Pleadings to be distinct

Bacon Ab Pleas 8 6 Bac Ab Pl 225

Bacon Ab Pleas 8 Bac. Ab 78. 81 Cath 298 Co 60 Litt 79 Co Litt 80 Litt 79

tinct

Pleas and Pleadings

he should plead specially his defence and conclude with a prescription. Pleas are divided into dilatory or peremptory. Dilatory are those which only delay a bond by giving conditions to pay money at or before a certain day. The Defendant pleads payment before the day of the Plaintiff holding out paid before the day; he should have pleaded that paid before and not on or after the day: and yet this is traversing what is not alleged: Besides by a plea of this kind, even for to day he does not find it in the Bond, that when traversing what is not alleged, may lead to the most inconvenient, then it is competent and proper for the other party to plead a bringing forward the allegation, and traverse what is not alleged so that it may lead it to a material issue of Fact or Law

ij

Stop and Pleading

[illegible] alleged [illegible] Special Demurrer only in point of form: It had only in point of form breach the part for [illegible] of [illegible], what he ought to plead by way of special [illegible]. The only question [illegible] the material matter was pleaded upon the [illegible]. The [illegible] had [illegible] the following [illegible] of [illegible] improvement or suggestion [illegible] be [illegible] as a general rule, matter of improvement can not be [illegible] and the case in which it could be [illegible] were [illegible] and the reason is because matter of improvement is [illegible] and [illegible] and may be [illegible]. They [illegible] the Plaintiff in an action of Slander declared that [illegible] he [illegible] an oath before the Mayor of Boston, and the Defendant said you are forsworn. This is an indirect

Stile vs. Mayor &c. of Boston

1 Salk. 11. Cowp. 8.

[illegible]

but by the instrument which gives the plaintiff his right of action and on the bond said it might be brought. It has been before offered that evidence parol and the whole transaction or cause of action, hence it follows that when a party position or contract and another, by parties only of the material allegations on the other side by traverse or to copy [illegible] will be written, or with the part not [illegible] B.B. the breach of the Defendant bond a release, the court drawing that be guilty since the plaintiff and before the date of the bond. The plaintiff stands only to be [illegible] connected before the sale of the [illegible] upon the bonds must be consistent with the fact not [illegible] [illegible] and that fact [illegible] all [illegible] consistent [illegible] the [illegible] and before the sale of the [illegible]

Cr. 2 [illegible]
Cr. 222

Plea or Justification

For a plea the Defendant should plead a different or that justifying the trespass done, or must prove a trespass antecedent to the different or else be thus grounded. Suppose the Defendant pleads a license at a particular time he must prove all trespasses committed both before and after the date of the license. The proof is easy in to plead the general issue or to the fact not guilty: if the Defendant pleads a justification at any particular time or else he must be ready to disability at any other time. There is some exception to this rule viz. When the justification is laid on the same day and the trespass is alleged to have been committed the same day against whom by the bounds of the trespass entire and the trespass complained of or identical in the fact and nature of a trespass. It is binding facts a good

Sir. 695.4
Cowp. 18
n. 1.4

plea

[illegible]

[illegible] and [illegible] the [illegible] [illegible] [illegible]

[illegible]

[illegible] that the act will be justified
and the injury of the complained of
[illegible] is the consequential probable result
of an [illegible] or [illegible]
[illegible] the blood-and bone
[illegible] the act are
correct and justifying [illegible] but
[illegible] the [illegible] of [illegible]
[illegible] to nothing if he will admit
[illegible] that the trespass complained of
[illegible] justified and [illegible] the damage
and according to the [illegible] authorities
this practice is now approved of in
England. [illegible] and different [illegible]
[illegible] on the subject in textbooks:
[illegible] the trespass which is proved
[illegible] and that complained of are not
[illegible] the same time the plaintiff is
[illegible] and that the defendant
[illegible] is to deny the allegation and
[illegible] the burden of proof [illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Ideas and Feelings

Disgusting

There have been much speculation with regard to the future effect of an independent and about to assume an independent. It is said that it is entirely prerogatory, a transfer will be passed, all go the party on the opposite side to prevent the investment and the transit go to the same point, although not always so, of what will be gained in the investment. It is from of these that it was completely agreed of speculation, good and useful reflection. Above had that it was completely agreed, opposition that it was completely in this way as well, negative ideas without involving an investigation and the [illegible] the first place an inducement which was to use of protestation assures a [illegible] and necessary purpose a [illegible] relative: that [illegible] be induced [illegible]

Clay and Clotworthy

he may have occasion to use for other purposes than under the transfer, which would be sufficient, and the case is only a bond given for the John Sitler case, since in trial, it appears that the indorsement for John Sitler Lawrence
is also accounted that he is accounted
a plaintiff. When the instrument and the transfer go to different parts, or
form of claim or defense, the instrument is a necessary part of the defense
for the defense is incompetent without it. E.G. Justification under an order with a transfer of all the other papers before and after. Where the indorsement is a necessary part of the defense.

III. The practice of a transfer is to be used a negative pregnant. Lawrence in his system of pleading says a Special transfer without an indorsement is a negative pregnant. This is to be used in effect to every true but sufficient con

ceiving

Floor over Flooring

not always possible that the transfer will or will not amount to a legal payment depends on the possibility of the implication of the allegation to a fact = Thus, suppose that a person pledges [illegible]

Plow and Cleaving

in Pennsylvania, where a vessel of 40 or 45 tons will land in no inspection. Then there can be no legislative frequent more an increment on that account may not be necessary. In view the Defendant's counsel has, on behalf his Co-Defendant in error, the Plaintiff in error, that is not good. Nor there can be no inspection. In this, he is not experience. Another rule of pleading is, that a traverse must consist of specific matter: in other words, the Defendant's traverse must consist of specific matter. The plea is, however, the general issue, not an increment to a transfer in general merchandise, and so it must be positive and positive. Nor can it be positive and merely it consists of specific matter: for the transfer must be an specific fact and the transfer merely a conclusion drawn from the matter of fact, spe-

cially

Line 18.

specially stated in the ~~[illegible]~~ in
the document therefore the introduced
record conflicts of specific matter: So
in the case of a tresspass after a tresspass
it is necessary for the tresspass in a re-
cessary and material part of the de
tresspass, and it do its proper consist of four
the tresspass: Generally, a tresspass on
a direct denial, ~~[illegible]~~ forgiveness the tenor
of the allegation tresspass. But this
tresspass is not always right, it would
some times be bad to a tresspass prog
ment: E.G. to an action of trespass
the Defendant prays a release, since
the date of the writ: Replication, not
by act and case of, since the date of the
writ of. So in an action on the case
for obstructing lines ancient lights of
the Defendant should traverse the
tenor of the allegation that he has not
obstructed the lights, it would be a
Negative pregnant for he may have

obstructed

1 Saunders 96 a. 319
4 Bac. Abr. 1 Gwil. 196
Sir T. Raym. 96
1 Ld. Raym. 88
1 Ld. Raym. 156
2 Str. 1192

Saunders 319

obstructed him of them — In an action of
debt on bond by a bite at a before, an
bond may the Defendant plead payment
before the day: the Plaintiff can not be
barred in recovery that he did not pay
before, for the time made them be an
mutual and clearly a negative bond Contrary
cannot be shewed to avail before, at or
after the day = There are negative plea
bonds and lip pleas, that no space
can be joined — on a Negative plea — Bond
cannot or on an affirmative Payment
the Plaintiff pleadth have transfer
they not by act in manner and
form of the retainer in bis arg. when
demanding in the terms of the allegation Bond
leads to a Negative payment bond and
specifies when it was and had to bis the
terms; and he proved the bounds i
personally in usually followed by the
terms in manner and form as at
Law = There were not in general more

Pleading, Pleadings

of of fraud through the false pretence to be accounted as to constitute been proven of Stebbins v. Phillips, supra, 10 and not necessary and be conveying without been is ordinary good. A bracing not on the [illegible] of the allegations is insufficient on Phillips v. Bennett, supra, 8 and a [illegible] fraudulent or bad motive special demurrer to it is form [illegible]

Demurrer

22 Petition

This is a fault in all pleadings and the and been [illegible] of pleadings paid not to be a fault in Di [illegible] pleading. A Double plea is one consisting of several distinct and independent material allegations to the same point and presenting different [illegible] By the same point is here meant the same ground of claim or defense. So if one defendant should plead plenary and payment in a defense to the same claim he would be [illegible]

1 Bost 304
2 " 304
3 " 305
4 Pick 34
5 " 34
6 " 35
7 Gray 1
8 Cush 17
9 " 18

Pleas and Pleading

Duplicity for three matters requires different answers. But among different matters arising in different parts of the declaration, part consistent, duplicity by the joint may be found and not the false: one sufficient and the other insufficient in law. In order to connect to one the other avoid by two matters: Some of each plea is to the whole. So in some cases the Defendant may plead the general issue to one part, a special plea to the second and demur to the third. So also in Common Law if there are several Defendants each may plead a single matter to the whole or various matters, in different parts precisely as if he had been alone. If the pleas were inconsistent they would be at the mercy of each other. Duplicity is considered as a fault because it tends to confusion necessary specialty to confusion by

See Stat 4 Ann ch 16 §

Stat 3 & 4 Ann ch 9 §

See Tyd 915 Gill & Johnson 1 Burr 265 Bright 1 Bos & Pul 476 Stat 4 Ann ch 16 §

See Gilb Hist C.P. 114 Cowper 1 Term Rep 1 Bac Abr Pleas 1 Chit Pl 205 Lilly Ent 100

Chitty

Plan and Elevations

Sending different readings and to avoid
[illegible] they are taped in a great
measure according to the length of the
record. Indeed in a defence, if by a good
one answer, will be sufficient of two
hundred. Perhaps however it may
be [illegible] to recommend: for by
[illegible] difficult to choose the best out of a
number of defences. Every plea must
be [illegible] entire & connected and con-
fined to a single point, but to avoid
the [illegible] of matters of defence. The
[illegible] rule is rather disobeyed than
disobeyed for though it not connec-
ted [illegible] and [illegible] they entire
and confined to a single point, in
[illegible] simply single but a defence
may consist of more than one fact
for a [illegible] of these are often sufficient
[illegible] to establish a single plea and
matter of defence. Thus [illegible]
[illegible] and go to different points of
[illegible]

[illegible]

[illegible] [illegible] [illegible] [

1 [illegible] 111
[illegible]
[illegible]
4 [illegible] 117

[illegible] [illegible] entitled [illegible] If the pleas are two grounds of defence and one of them is frivolous and not sufficient this is not duplicity, [illegible] sufficient though insufficient. So if a release pleaded but not by deed, this is [illegible] though insufficient.

Of Duplicity in the Declaration

The joinder in pleading causes of action which can not be joined to enforce one right of action or recovery. S. C. Contracts and Torts [illegible] are [illegible] ex Contractu and ex delicto.

There are distinct and unnecessary counts of claim [illegible] are inserted to enforce one right of recovery. So if the plaintiff should declare on Contract and [illegible] that the Defendant [illegible] with [illegible] [illegible] [illegible] the plaintiff [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] duplicity [illegible] [illegible] [illegible]

[illegible]
[illegible] 66

t

4 Bac. Ab. 34
2 Prat. 31
2 Ins. 85
Lawes 95
Doct. 90
Plowden
Saunders 99
1 Bond 36.

a refusal or breach of covenant or breach of Duty imposed by the common Law: the second according for one breach of a penal bond works a forfeiture of the whole penalty. The Statute 8 Ann c. 14 sec. 11 has provided that in action on penal bond the Plaintiff shall recover only what is equitably due, consequently he cannot charge all the breaches for he is to recover only for the damages incurred by the breaches assigned. This statute is extended by construction of the Courts to all bonds. But in action of Covenant broken the Plaintiff may assign as many breaches as he pleases: but is restricted always to one Covenant in Law: Indeed they not only may but must be assigned. The reason is that a suit is brought to recover the actual damages in Consequence the

4 Bac. Ab. 34
2 Saunders 99
1 Bond 36

rule

[illegible]

[illegible]

[illegible]

is ground for a special demurrer in England, for the party can demur, the Court think he has [illegible] which is not so, they will grant a new trial. But such a regulation would be a matter of convenience here in those cases where it is necessary to plead specially: This [illegible] however extend only to answer to the Declaration. There may can be no replication to one plea, or two replying to one replication. If the rule were otherwise the pleadings would be unnecessarily complicated. Duplicity is a defect in form only and advantage can only be taken of it by special demurrer. There is too much substance and [illegible] the defect could be reached but by special demurrer. The party demurring must point out the particular duplicity [illegible] insisting [illegible] it is not sufficient to state that it is double

[illegible]

Bac. Ab. 15
4 Bac. [illegible]
13 [illegible] 134
2 [illegible]
[illegible] 85. 115
Bac. [illegible]
[illegible] 648
[illegible]
[illegible] 705
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible] 8
[illegible]
[illegible] 58
[illegible] 498

Pleas and Pleadings

[illegible] forms. Difficulty in construing
But this last rule, as to varying averments
in a plea which may apply where
the Plaintiff joins in his declaration
[illegible] grounds of action to superadd
[illegible] and substantial grounds of action
where the defect is incurable. It is a mis-
[illegible] of pleading and [illegible] worse
than duplicity. E.g. Trespass and af-
fray joined in two counts, in the same
declaration.

Cowl. 333
Salk. 10
7 H. 4 Pl. 23
3 Lev. 99
1 Ld Raym 334
6 Geo. II.
c. 14 s. 1

Profert and Oyer

By a general rule of Common
Law that where a party declares or
pleads a deed, and profers it, the
[illegible] to be [illegible] the profert [illegible]
[illegible] that he brings it into
[illegible] to produce: the party
[illegible] to demand inspect, that the op-
posite party may have oyer of it and a
copy of it following: he has oyer given
[illegible] where a deed pleaded

Lecture 23
(" ")

Cowl. Dif.
Plead. 3
3 Bl. Com
Appx. 4 a.

3 Com. 48
Com. 75
1 Bac. 109
Gilb. 13
Gilb. 130
Gilb. 58
Gilb. 10

upon

Oaths and Pledges

every person in accepting the oath for
by it bound to God - But if he does
so, his conscience, have been not re-
moved again afterwards. In England
the most necessary to make Parliament for
formality sake in a bill of Exchange,
for they are only in lieu of a promise
and the promise is valued as bad
but the oath that in Connecticut
formerly made are very wise and
are invaluable binding and are so to
a Christian. Consequently a pledge may
a person as at any time upon it Con-
sideration: yet it is not necessary to
have recourse on extraordinary only
they are Contrary. In New York. pro-
formerly made are made Duty by ad
hering a seal. Whenever a religious
guided by God, will fear without
oath, the Jewish claimings is not able
and to plead the Deed, and consequent
ly protest is unnecessary: for by ad-
ditional

Blood 285
Exod 20
Eze 13

Children
in Office
Matt 5
Matt 23

to make perfect what is not pleaded: So in England, an Assignment of a Debt to pay is good: So if title is by Deed, title need not be pleaded: Consequently no fact is necessary, and even though he were bound by bond not assign without Deed: But if it could pass merely by Deed, then the Deed must be pleaded, and fact must be made: E.g. Inventory of an Administratorship must be pleaded and perfect made: So a Devise must be by Deed and otherwise a Trust: But though the right would pass without Deed, title if Deed is pleaded and title made under it perfect must be made: Yet if Deed is pleaded and title the Plaintiff must make title under it, he is not bound to make perfect it: So if by Direction of indirectment the Plaintiff need not make perfect it: Dyer

Dyer 119
Co. Ch. 143
Stob. 139
1 Roll 110
2 Rand. 64

1 Salk. 119
6 Coke 18 a. 26
6 Mod. 155
Cro. Ch. 143

Rand. 64

not

not go to the gist of the action and the
court be satisfied or remedy it is not
necessary in order to render the other
party to make an adequate defence for him to [illegible]
this defence cannot be contrived to
the [illegible] or cause of action. A — 3 Bac. 80.
Stranger to a Deed need not plead it with — [illegible]
out making profert and the reason is — [illegible]
it is not always in his power to do it. He — 9 Co. [illegible]
may however compel the other party to
bring it into Court by a [illegible] petition
[illegible] thereof. And a person who ac-
quires title by operation of law previous
to that who claims title by Deed need
not make a profert thereof. Tenant
in Dower: She need not make profert — [illegible] 225
for she is not obliged to have it in — [illegible]
her power. But to the general rule
last laid down there is an exception — [illegible] 186
in the case of Tenant by the Curtesy for — [illegible]
he is deemed to have possession of his wife's — [illegible]
Deeds and being entitled to them during — [illegible]

his

Sir Edward Wilmot's wife is not supposed to have her Husband's Dead Body buried in the Church of the Town of Second Priory Hereford without making proper provision for the Rent to be kept in repair and also allowed to be removed from place to place. Plot the said when the Plaintiff in the same Court have the Corpse in his possession & point out the Inclosure of the Tomb, so that the Defendants may easily find the Tomb & prevent in part of his Power. Plot for in by the Jurors & when the Dead was buried full in Dear with a Perfect, where it would be necessary for the Defendants to transport it to make a Proper. Sir Edward Wilmot also making little under his Battery Dead Bound Corpse a proper Tomb. Sir a Particular Bound proved Corpse proper of a Dead to a Corpse by since Dec is to belong to both Lett and Priory to Z. Rent by the order of the

Plaintiff

Defendants

Jurors

Plaintiff

Defendants

Pleas and Pleadings

(But in Connecticut the Judges think the rule as to an heir at law and tenant [illegible] here the Real Estate descends to all the Children — whereas in England it goes to the eldest son exclusively, the deed therefore can be no more right to the one than another. It may be a question merely whether the necessary for one of the heirs [illegible] to produce it in evidence the first objection does not lie, [illegible] at all in Connecticut.) But if a deed is lost by time and accident, or destroyed by casualty, or by fire it may be pleaded without profert. So also if the deed is in the possession of the opposite party, though it belongs to the other; but the reasons for omitting profert in these cases, must be stated in the pleadings specially; otherwise they will be [illegible] [illegible]. If in that case the plea with profert be made it is considered by the Court as not contained in the pleadings. The deed

5 Bac. Ab. [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

must be pleaded which go to dispense with the protest. If however in such a case, the plaintiff neither protest, the opposite party in a right to [illegible] So he can't proceed at all yet the plea [illegible] be a [illegible]. Where the [illegible] is only the instrument [illegible] of [illegible] bills is not made [illegible] it, protest need not be made. [illegible] not within the rule requiring protest. But it has long been settled in Connecticut that protest is not necessary: [illegible] [illegible] is recoverable without it. In no case in which in England protest is necessary, is [illegible] recoverable without it. At Common law the omission of protest, where protest is necessary, is matter of substance and demurrable, not cured by verdict. And now by Statute 13 and 14 [illegible] and 3 and 4 Anne (which are the great statutes of [illegible] is required to [illegible] [illegible] [illegible] be in

[illegible] 225
1 [illegible] 225

[illegible] 38
[illegible] 275
[illegible] 94

[illegible]

[illegible] 56

[illegible]

[illegible]

taken advantage of [illegible] by [illegible] [illegible]. So it is [illegible] by [illegible] [illegible]. But if [illegible] [illegible] without [illegible] drawn by [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Yet [illegible] made to appear probable to the Court, that [illegible] otherwise a party by [illegible] a [illegible] [illegible] the [illegible] the Deed itself out of the [illegible]: the [illegible] satisfactory evidence of the [illegible] is unnatural [illegible]. So it is necessary only to make it appear probable. The same [illegible] general rule is admitted where the Deed is in the hands of the adverse party [illegible] notice [illegible] having given him [illegible] to produce it, or otherwise a copy [illegible] is not to be admitted. [illegible] the party [illegible] producing [illegible] the Court will [illegible] the [illegible]

2d Ray. 731.
1 Atk. [illegible]
[illegible] 156

ice

Pleas and Pleadings

Plow. 206. parte to produce the deed: this may
[illegible] Rep. be done by a petition in Chancery.
56
[illegible] 135 But if the party can prove it by any o-
ther evidence he may: then profert is

1 Bac. [illegible] [illegible] [illegible] [illegible] parts being [illegible]
[illegible] 96 [illegible] [illegible] deemed to have the deed: So
[illegible]

[illegible] where [illegible] [illegible] it [illegible] [illegible] [illegible] [illegible]
[illegible] of it [illegible] [illegible] made at his own ex-
pense. But oyer is not demandable of

[illegible] a record, when a party pleads profert.
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] it, and
[illegible] this is known to the Court: [illegible] pro-
fert of a deed is [illegible] [illegible] [illegible] and
[illegible] [illegible] [illegible] not demandable.

[illegible] The object of allowing oyer, is to enable
[illegible] the [illegible] to [illegible] [illegible] what is
[illegible] alleged in the [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
the party [illegible] [illegible] [illegible] a right to

to it, is a sufficient fact in it expressive of his defence. When such a question the party demurring it may enter the whole Dec. Condition in the Record or take advantage of any thing so stated by the party who pleaded it or any thing which appears on the face of the record. So if there be a Condition, the performance of which may be over the possession of the land he may plead performance: but frequently all that is necessary is to specify it in the record and then comes the party a variance of the contract or offered bar in the way in the record. But in general it is that if the instrument is insufficient in Law to support the action or defence as it on the face of it is illegal, it may be pleaded on the record, and then demurred to. But if not insufficient or illegal on the face of it the party should be

b Wms 78. Lawes 289 Stra 699

and so Lawes 99

made out, by argument: it can not be assumed to be so if in an action on formal bond, it appears from the pleadings that it was given for illegal consideration: by bad in the first place and may be assumed to: that if the true consideration is not explained then the plaintiff must prove, but must show the illegality by argument.

If a Deed or instrument is lately made by a party after entering into the strength of his argument for, want of a plea in formal form to be included in his Replication, by the plaintiff of the fact and then proceed:

By falsely positing the existence of a breach of trust by a defendant an implied argument to prove the breach lately and therefore his plea stands for nothing and is treated as a nullity and judgment is taken, as though he had no pleaded at all.

[illegible]

[illegible]

[illegible]

Defendant's Pleading —

Replication

If in the replication or other pleading a material reference is made to an instrument or document, it is not necessary that it should be fully set out. The allegations of each party in the progress of a stage of pleading should fairly allege facts or law. Thus the replication should justify the declaration against the rejoinder the plea. So if fraud is the plea, fraud must be alleged in the rejoinder by a stage a fight in trial. This is departure: for the latter is not a fair single state made in defendant's. So if the Defendant pleads Release, and the replication illegality, and the Rejoinder is a release, this is a departure: So in actions of Covenant broken Declaration alleges performance of a condition precedent plea is non-performance: replication the plaintiff was ready to perform and the Defendant refused: it is this this is a departure.

Bac. Ab. Pleading (B) 1

Rayes Case 4 Co. 17 b

Hob. 80

Co. Litt. 303 b

Ray. 449

Plow. 164

Co. 108.

Co. Litt. 304

Cro. Eliz. 595

Hob. 80

3 Bl. Com. 310

Hend. 7 Jac. 195

Stephen 4th Edn. 303.

314

Bac. Abr. 3

Co. 17

§ 33. Whenever the cause of action is alleged
Comy. 343
2 Rol. 80
Saund. 28
Rol. A. 2
Comy. 345
2 Wms. 31
generally, the Defendant pleads
specially, a more particular statement
by way of a special plea is required
and is demurrable. In fact an action of
trespass the Defendant justifies on the
ground of certain rent due and owing
to him by the Plaintiff, and specifies
the amount, or the Plaintiff specifies
the amount to be different from the
amount specified by the plea, they must be
either of the complete defendant to
demur, or they must appear and
without taking issue on the plea: Defen-
dant may plead a justification and issue
by a special demurrer (Williams
on Saunders, p. 28) or, they may
demur to the special plea and
but be a subsequent rule to prove
that it is not the fact issue

by

Plea and Pleading

by Verdict if there is enough on the Record to entitle to Judgment Judgment if enough appears on the record to entitle to Judgment.

Sackville 291 a
Stage 4 a
Ray 2 c.
86. 94
132 and 117
2 " 86

Dilatory

This is said to be an irregular or collateral part of the Pleading by "Law" = It is strictly not a plea but an excuse for not pleading: It is said not to be plea, for it clearly not a Dilatory plea, nor a plea, to the action: and these comprehend every kind of plea, consequently it not a plea.

A Demurrer admits a legal proposition, viz. that the pleadings on the other side, are not sufficient in law and therefore he prays judgment [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Plead and Pleading

principles a Demurrer cannot be given, as a matter of law, in support of the plea, unless it appears on the face of the pleading. So in an action of Slander for taking goods in the County of Clare, if the defendant allege to have taken place in the County of Limerick, a Demurrer does not exist to be sure because it is impossible that the County of Clare should be within the County of Limerick & a Demurrer is not a mere fact, which appears on the record to be incapable of legal proof. It is incumbent upon a party to aver that which can only be found. So if one pleads a release by parol, a Demurrer does not exist, for this must be proved by writing. Nor does it lie for allegations which are not material nor traversable. Such allegations need not be demurred to in any form. But a party demurring against it should be careful not to admit what is traversable for

1 Str. 16 Gen. Digest Pleader 4 b.

Pl. Wil. 275 6 Co. 46 a. 8 Jac. 254 Lawes 98 Pain 194

Gilb. 251

Gilb. 251 Lawes 98

tion

Pleas and Pleading

4 Bac. — then he would be obliged to confess fact, whether he were willing or not. De-

4 Bac. Ab. [illegible] 331. — -murrer [illegible] it with the truth of in-strument or conventional Agreement. These are not to be denied: a demurrer

[illegible] — admits also conclusions of law [illegible] by the averment of facts before stated. Facts are [illegible] to [illegible] of Law: but in a plea of justification the conclusion is [illegible] a [illegible] a demurrer does confess those conclusions [illegible] a [illegible] in [illegible] [illegible] is [illegible]

[illegible] — [illegible] [illegible] be [illegible]. A [illegible] which the pleadings are then confessed [illegible] [illegible] [illegible] and [illegible] [illegible] [illegible] a Demurrer is general [illegible] [illegible] [illegible] [illegible] but [illegible]

[illegible] — directly [illegible]: it [illegible] [illegible] as [illegible] [illegible] [illegible] [illegible] [illegible] title the party [illegible] [illegible] [illegible] the De-murrer. If there is a Demurrer and [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] is [illegible]

[illegible]

Pleadings

may be the Defendant if such is held
liable for the trespass but the Trespass
may also be the damages be recovered
from the Master Demurrer to such
an Act which is transitory: If it were
Trespass then a Plaintiff be prevented
leave to be accorded in order to obtain
Damages on the first demurrer to: Still
the discretion with the Court to try the
Issue of Law first or last: If where one
Fact is pressed to and not part the
Replication the Demurrer is overruled the
Plaintiff may enter a Cognovit
as to the Issue of fact and have Damages
assessed on the other fact only. E.g.
Where are several breaches assigned in
Covenant, some are Demurred to such
Pleas are transitory. Or in matter of
Commencement where he initially in Action
rises on the Issue of fact: If he enters
on the Record that to the part traversed
he will go further Confession and then

Stat. 4 Geo. 2. c. 26. Stat. 4 Geo. 2. c. 26.

Salk. 218. Stat. 5 Geo. 2. c. 19. Stat. 4 Geo. 2. c. 26.

Stating

stopping the proceedings of a couple. If a
[illegible] bill [illegible] could be a Demurrer
to a Plea [illegible] the [illegible] a Discovery
[illegible] = A Demurrer does not allege
any matter of fact in opposition to matter al-
leged in a plea: It goes to [illegible]
[illegible] where a plea is [illegible] is not
[illegible] and it is [illegible] [illegible] [illegible]
[illegible] a Demurrer to a Demurrer: The
[illegible] days be [illegible] not [illegible]
[illegible] that is an [illegible] [illegible] [illegible]
[illegible]: The truth is the Demurrer
[illegible] the only [illegible] of Law which [illegible]
be [illegible]. It follows that in all cases
[illegible] [illegible] where one [illegible]
[illegible] the other [illegible] [illegible] [illegible]
the Demurrer to the Pleadings [illegible]
[illegible] the Defendant says that the [illegible]
[illegible] and the [illegible] [illegible] [illegible]
are [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

Effect of Demurrer to Pleadings

Demurrer

Demurrer

Clear and Pleasing

Matters therein contained are difficult in Law and hard to be understood. The Statutes be known or legal. Filing a Bill for a confirmation of Title to prevent opposition to and the Measures and proceedings above in the Defendants pleading and the Matters in the Bill contained are in no wise sufficient in law for the said Plaintiff to maintain his action against the Defendants, he hopeth the said Defendants Counsel will be pleased to answer and let it be ready to verify. The Defendants Counsel necessary to demur with a verify a Matter, nothing now being alleged in the Bill worth.

Lawes 1mo 21 Leo. c. 4 5 Eliz. 30 Cy Rebt. 4 Cont. 395 3 El. Chap 7 c. 8 Cro. Eliz. 2 Cy

The Opinion of a Barrister

The Bill says Surrepticiously and Deceitfully without any Ground or Colour: there

Dr Fletcher Cont

Dyer 30 Cont 300 Dyer 69 34

[illegible]

[illegible]

[illegible]

Plea and Demurrer

Says, the Declaration is insufficient in Law and is not sufficient to the said Defendant. But it does not say, in specially assigning that the other part, but said the place in which the injury was committed to arise. By Order by Court, that special Demurrers were introduced by the Statute 27 Elizabeth, they however is incorrect for they were known before that time: that statute only matters special Demurrer necessary in certain cases, in which they were not at common law. It makes them necessary in all cases of Defects in points of form. But the statute is a special Demurrer, by not sufficient that the cause be assigned with particularity. But still if the cause is generally assigned, is a good Demurrer. Thus if the Assp. and for cause for specially assigns, that it is uncertain and merely formal state

by

4 Bac. 150
Plead. 200
Gram. 157

1 Gram. 317

by a Special Demurrer. In order to make it special he should [illegible] that the [illegible] the other party [illegible] [illegible] the particular cause of Demurrer [illegible] [illegible] [illegible] [illegible] [illegible] the defect is in the [illegible] [illegible] [illegible] or special [illegible] [illegible] defect, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] general [illegible] [illegible] [illegible] defect, [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] Pleadings

General demurrer is by General Demurrer but defects in form can be attacked only by special Demurrer under the Statute 27 Elizabeth. If there are faults specially assigned on special demurrer he may take advantage of defect in substance though that is not specially pointed out. The principle of 27 Elizabeth is [illegible] [illegible] [illegible] in all the States the Courts of Common [illegible] have [illegible] the [illegible] of the Statute [illegible] [illegible]. In the U. [illegible] [illegible] the necessity of pleading specially is extended further than by the Statute of Elizabeth. The latter [illegible] [illegible] generally that all defects in form must be attacked by special Demurrer. The [illegible] extends the rule to certain particular [illegible] [illegible] and to be within the other Statute [illegible] [illegible] the necessity of [illegible] special [illegible] all [illegible] the thing [illegible] [illegible]

[illegible]

1 Chit. 88 [illegible] [illegible]

1 [illegible] [illegible]

Pleas and Pleadings.

Hob 232. necessary. 1st that the matter alleged
162
1 Bac 133. be sufficient. 2d that it be alleged
Ind 7
Imp 363. according to the forms of law. The want
2 Ld Raymond
778 812. [illegible] of either of these being fatal, by gen-
eral Demurrer. The omission of the
former is cause of General and of the
latter Special Demurrer. But what
constitutes a substantial and what
a formal defect are important ques-
tions. They admit only of general defi-
nition being in their nature abstract.
The most definite one that has been gi-
ven is the following, viz. the omis-
sion of that without which the very right
does not appear sufficiently is a defect
in substance; but the omission of that
without which the very right does not
judicially appear though that right be not
sufficiently alleged according to form
is a defect in form only and not in
substance. The [illegible] is that the
[illegible] not alleged in [illegible] [illegible]

[illegible]

Plea and Findings

to the Jurors of Jesse Hay of the Plaintiff
and to have the performance of a con-
dition precedent to his matter of debt
or other right which only to accrue
on the performance of a Condition: so
he pleads the same right truly now and ab-
sent. They find Bond in a penal sum
and on a condition that he pay
to a certain person of Stark and
in his Declaration does state the Con-
dition without averring performance.
And the is arrested by a De-
tail in Nullum: So he comes to plead
performance from the Defendant but
knows that his Day is expired & still Recit
Time is an Estate which he ~~has~~ vested
in him and ensuite that the owner of
a Day shall be accounted for it the
Recital he is: But on the other hand
in Action of Trover and Conversion of the
Place where is possible, then a Matter
of Inducement for it and a Special Matter

v

upon permitted: the action being tra-
-ing the right of appeal: State however the
deficient form of Law requires that the in-
-ment be made: Again, if the Declara-
-tion is double, it ought in form: So if a
Contract and tort are joined in the
same Declaration: this is a defect in
form for the Contract was enough: there
is too much pleaded. The right of two
sons appears in the end but the Decla-
-ration is bad in point of form: So if the
Defendant plead specially a statement
to the Declaration, this is a defect in
form: the pleader alleges but the form
of allegation is defective: Upon what
has been said it will be seen that where
there is a total denial of existence or
where one or the other not having
been given or where a material allega-
-tion is omitted, a general demurrer
is sufficient: But if there
is the mere omission of a material fact or is

Offer and Pleading

Language, and plate, that he was an infant
[illegible] at the time of the libelous writing: this
is peculiarly general demurrer, for it
is apparent to the right of recovery:
The law of the distinction between de-
fense in fact and defense in pleading
the effect of proof after admitted in the
face of the pleading to appear to be con-
tributed because pleading the libel in order the
Defendant for he has no right to plead it
in any form of [illegible] Demurrer
[illegible] other formal defect, [illegible]
[illegible] specially alleged for cause of
Demurrer. In defect is specially of
pleading by a general demurrer of the
declaration; [illegible] and [illegible]
[illegible] of law is alleged
but not the Defendants in this case the
Defendants could be taken advantage of
[illegible] in bar the Defendant
[illegible] of the Plaintiff, [illegible]
[illegible] motion for the

[illegible]

1820. 1821
Stat. 153.
1 Ch. 2. 201
6 Pick. 103
Barth. 309
3 Bing. 604

Bill to
[illegible]
38. [illegible]
[illegible] 184

[illegible] 1820
[illegible]

[illegible] 1820

[illegible]

same cause can afterwards be sued
upon on the same ground as are dis-
played in the first Declaration: But
where the Plaintiff fails for want of
an essential allegation, he may declare
in another action for the same cause
assuming that allegation. The pleading
in bar also in case must proceed thus
that is indefin. in the first: by true indef.
that he was a right to have the land
part of his cause tried twice: but here
in the first cause, the real merits of his
cause were not tried. The grounds of
Defence are different. So also if the Plain-
tiff discovers in action, he may bring
another action for the same cause: be-
cause the action are not identical
and consequently the Plaintiff may
prove other Facts in the first action.
The same rule generally applies
as a rule if the Plaintiff fails in his
Pleading for any defect of
form.

Pleas and Pleadings

In England, suppose for the Plaintiff in one Court action, an bar to another to try the same right. Not Civil Law maxim "Non Ea: Than is but one peace action." Opposite of the Declaration is insufficient through mistake in the pleadings yet if the Def. takes no advantage of such defect, but pleads something in bar, and issue is taken and the wrong right is found for the Defendant, the Plaintiff shall have no other action for the same cause since the jury have been tried: Or if there is a Demurrer and refusal are stated, but not traversing and the Defendant instead of demurring pleads a release and issue is taken and verdict for the Defendant, yet he shall not have another action; he can not say the legal merits have not been determined. A Demurrer should always extend to the whole of the

6 Mod 207
Mich. 12 Ro

Cowp. 204. Hob. 214. Yelv. 181. Lawes 111.

to proceeding on the other side, only in part of a second in some other case: that the Discovery should be accepted only with the sort and they accepted: although he filed at Bar never ready, yet through the whole record, and at tacks to the eight particular points in the pleading: that the defendant by pleading over: the Court must give judgment on the whole record.

To plea Declaration ill and the plea bad ill now if the Plaintiff Demur to the plea in bar judgment will be for the Defendant and plea bar bad.

Bul. 55. 99. 200. 6 Co. 10. 2 Roll. 80. 3 Co. 55.

Declaration of the Defendant is good enough and a bad plea bar cured by verdict: judgment may be for the Defendant notwithstanding the Plaintiff's bar is bad, for the Plaintiff's bar is bad, for the Defendant's plea in bar is good enough and a bad plea

Cro. Jac. 12. 3 Co. 20.

standing before the verdict is cured.

Plea and Pleading 99

avoided by placing such other [illegible]
in a clear & explicit manner the
matter upon which the defendant
[illegible] the performance of the
Contract on his part, if the Defendant
pleads an insufficient plea or insufficient
in abatement, then the Plaintiff
may be entitled to judgment for an insufficient
breach, and if the Defendant demurs, he
shall have judgment through the Decla-
ration is good and the defendant
will effect was in his power, but is
under of course the plaintiff is bound to
[illegible] the [illegible] which appears
like the replication which is known part
of pleading with the Declaration [illegible]
[illegible] is [illegible] to place the
[illegible] of Action the [illegible] no [illegible]
of the [illegible] of the [illegible] in the Declara-
tion [illegible] defendant then [illegible] the [illegible]
in the Plaintiff by [illegible] of [illegible] and then
the [illegible] [illegible] [illegible] [illegible]
the [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

if not also in the Defendant's
Defence of Discovery to be produced.
The Plaintiff's evidence is a fragment
of a wreck and a yet fatal
fact he alone under which a sea has
invaded in an hour of fog, our boat
may take the oath from the jury either
corroboration of the evidence to the boat
by Plaintiff to the evidence of whom
it is. In case such indeed, where the Defendant
of the wreck is found, or to render the
proceeding proper the Plaintiff may
be taken to be taken before the
Court Plaintiff exhibits the evidence,
he is entitled to secure the boat in
order to offered evidence and de-
termination is sufficient to ascertain
the other the relevancy of evi-
dence is always a matter of law to be deter-
mined by the Court. The relevancy being
established the question of evi-
dence to establish the facts in
matter

Place and Place &c.

question for the jury to determine. In a
Discussion of evidence is necessarily joined
with its applicability to the issue:
Bishop says that questions of
law must be determined by the Court
and matters of fact by the jury. Dougl. 300
Therefore no evidence can be proper to
be evidence which is clearly irrelevant &
foreign to the whole issue. Evidence
is not law and evidence is always Dougl. 360
relevant which is conducive in any de-
gree to prove the issue. The Defendants
point are not to the question of fact and 6 Bac. 50.
the jury is not more to be concerned with 3 L. Rep. 113.
the case: the Defendants refer to the Court 5 Rep. 104
the application of the case to the facts 1 Ch. 151.
shown in evidence: This Defendant
then admits the facts shown in evidence 2 Long. 61
by the whole jury and the all other 4 Ch. 405 &
Defendants admit their legal liability
in cases of doing what exhibits their
their sufficiency in law to establish the

Issue

fact: The facts the pleaders be first ascertained: until they is need be questions can not arise on Demurrer. Matter of Law is a conclusion from ascertained facts: The question here is as to their sufficiency: consequently the facts must be first ascertained: In Demurrer to evidence it can never be taken except when there is a joinder and evidence offered to support that issue: If Demurrer to pleading is taken to allegations in support of the case: Plaintiff Demurrer to evidence is only taken to evidence adduced in support of one side of the issue after issue is joined: The form can never be taken after issue is joined and the cause passed before: It is clearly agreed that when the whole evidence exhibited is on item, it may always be demurred to and the party exhibiting it must either join in the Demurrer or rule to his counsel to

Dy 13 K 200 206

Bullitt & Cord pag 3 Bl. 32 Hunt 8 Pet. 174 Bac. Abr. Ev. B. 12 Gilm 170

being

being all written then is no occasion for
pleading. The writing possibly is contrary
to law, or a Bond is exhibited to Defendant
of a title, or a Bond is exhibited for
Debt, they may be required to shew
whether a Plaintiff exhibiting false evi-
dence is bound to prove the Bond to
evidence, or a question such as arises by the
Bond nullity. The Court, if it
is shown that a party is not bound to prove
and the reason assigned is the uncer-
tainty of such evidence, it is to the
following points - we will be signed. It is
clearly stated that in such case both
parties are agree that the evidence may
be dispensed with. Here then there can be
no objection for there can be no need to
prove the Defendant plaintiff. Hence of the state
ment of a Witness is admissible as evidence
I have very definitely fixed the whole
point, may always be considering the fact
itself as the record, allege the other party

Body
to Bond
to be

Br. Pl. 202.

by

Allegations 2 Bl. 306

to join in demurrer or to waive the evidence. So if in trover, a party offers a bailment to prove conversion by negligent keeping: here if the other will admit that the proof were left by negligent keeping, he may demur to the evidence. So be case, if it were the mere fact in issue it would be nugatory to demur.

Demur. 10 J. 121 2 B. Bl. 305. 307 & 309

3d It seems to be now settled, through powerful aid of, that if parol evidence which is exhibited is certain, direct and explicit, one party by confessing it to be true on the record, may compel the other party to join in demurrer or waive it — confessing the evidence to be true

2 B. Bl. 305

in the pleas as confessing the fact for no responsibility follows from the other. But confessing the evidence to be true does not always entitle the party to compel the other to join. 4th If the evidence is confused and indeterminate, the court party can compel it, without admitting the

fact

fact which it tends to prove. But in such an assumption, he may answer to it, whether written or parol. Mr. Grady may be fine, no examples in the Books, of this kind. By law and in recommended evidence, it means that which is undistinguished from certain evidence. For such as the Witness hearsay is not certain what? or if he "thinks so" or "has such an impression". Now if incidents in this form were ~~admitted~~ admitted, it would be impossible for the Court to draw any inference from it. Every might intend. It is the province of the Jury to weigh the evidence, and after the facts and circumstances the Court may draw conclusions from them. The facts then must be admitted. So if in Spoken a witness is in a condition to appear to Bonaparte by the glass, he may be believing it was left by Napoleon. Now until the fact of the

Affirmative

Ibid 213

properly to have left it entirely upon what
had the party might not to be allowed to
give in evidence to evidence fact re-
ferring the question of fact to the Court, &
that the Court could find upon it would
clearly be inadmissible &c. If the evi-
dence is circumstantial, the party
demanding to be present distinctly ad-
mit or record every thing which it ex-
pects to prove every thing which the
jury might infer. This is distinct
from the last kind of evidence. The
witness must be fully positive to facts
which facts are circumstantial, or
evidence only. The judge can make
no inference of facts: he is not admit-
ted, it would be of no avail. Cir-
cumstantial evidence is not for
general in opinion only, but opinions
are right frequently connected in
Recent Circumstantial evidence is
rules in gray to prove facts which facts
evidence

Ch. gd. ca. 34
Dougl. 119
Ry

Phil. Ev. 14
Stile, 102
Sel

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Plea and Pleadings

for advantage can be taken of any
defect in the pleading. After Verdict
the omission is determined, and a judge-
ment be taken of a bad in the plea-
ding, by a fictitious issue of fact and
after Verdict. My friend Mr Ward says
fields, that the notice line, in the
Bank Pleading as a fictitious allegation
notice. Not Paulo probably written by the
Bank after general Verdict and be
Verily it proved little judgment by de-
fault. A general Verdict after issue
joined in the pleading in an action of
Ejectment for mistaken, drives
the jury constrained have found this
fact because they have found Plaintiff
in Demurrer to evidence, at the trial, Doctrine
and stated in the special Verdict Verdict
to entitle the Plaintiff on the Pleadings
in Pleading after special Verdict on
Demurrer or Special Verdict
jury confess to state that upon the

Clay and Clearing

[illegible]

Crackers

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Plan and Specification

[illegible]

[illegible]

[illegible]

[illegible]

Pleas [illegible]

[illegible] found to [illegible]
[illegible] be [illegible] of the [illegible]
[illegible] a [illegible]
found [illegible] the [illegible]
[illegible] nothing [illegible] to the [illegible] [illegible]
[illegible] may [illegible]
[illegible] the [illegible]
that he [illegible] that [illegible] Cro. Eliz. [illegible]
[illegible] that [illegible] [illegible]
[illegible] it is [illegible]
[illegible] clear that the difficulty [illegible] in
applying them to particular [illegible]
what kind of [illegible] his pleading
[illegible] would be [illegible]
[illegible]
may be [illegible] for [illegible]
[illegible] be [illegible] for [illegible] after judgment?
[illegible] the only [illegible] [illegible]
[illegible] what [illegible] [illegible]
[illegible] [illegible]
[illegible] the [illegible] [illegible]
that [illegible] the [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Pleas and Pleading

Verdict will be presumed to have been proved. So after verdict the Plaintiff was not state the value [illegible] general Damages for there is no rule of damages furnished yet it [illegible] by verdict for the Pltff is presumed to have proved the value. The verdict ascertains what before was uncertain. The rule of Damages [illegible] the Verdict [illegible] [illegible] and no matter [illegible] case [illegible] the trespass was committed [illegible] [illegible] [illegible] [illegible] appear to have been [illegible] before the [illegible] issue. But after verdict to presume to have been [illegible] [illegible] [illegible] [illegible] the [illegible] time of the [illegible] [illegible] have [illegible] the [illegible] [illegible] [illegible] shown to have been [illegible] before the [illegible] [illegible] the [illegible] of the [illegible] [illegible] being [illegible] [illegible] the [illegible] of the [illegible]

[illegible] 407
Cault 389
Bo [illegible] 44

[illegible]
5 Har [illegible]

[illegible]

[illegible]

[illegible]

Pleas and Rulings

Section 3.

Defective

[illegible]

[illegible] Reversing

for [illegible] the Plaintiff a [illegible] 3 Burr 1708
[illegible] that a [illegible] which is not [illegible]
[illegible] from the [illegible] stated [illegible]
[illegible] and be presumed to have been 1 Wils. 113
[illegible] [illegible] over the [illegible]
[illegible] [illegible] of [illegible] [illegible]
[illegible] [illegible] of [illegible] of the
[illegible] [illegible] [illegible] [illegible]. This is
[illegible] by [illegible] for [illegible] [illegible]
[illegible] any thing which [illegible] [illegible]
[illegible]. [illegible] [illegible] that the
fact omitted is necessary to warrant the
[illegible] [illegible] the facts alleged [illegible]
[illegible] [illegible] the [illegible] [illegible]
[illegible] [illegible]. The Plaintiff [illegible]
in the Defendant which is [illegible]
[illegible] to be [illegible] of [illegible] and not
inferred from the facts stated. [illegible] of the
Action is brought against the endorser of [illegible]
a Bill of Exchange without alleging [illegible]
[illegible] to the Defendant of the [illegible] payment
or [illegible] of the [illegible] [illegible] the

[illegible]

[illegible] Pleading

[illegible] [illegible] [illegible] of the [illegible] [illegible]
and they [illegible] [illegible] [illegible]
them. But [illegible] [illegible] the Plaintiff
[illegible] that [illegible] [illegible] [illegible] of
the [illegible] [illegible] [illegible] may [illegible]
to the [illegible] the Court can [illegible]
[illegible] [illegible] [illegible] that matter
which [illegible] [illegible] [illegible] is [illegible]
[illegible] [illegible] the record. [illegible] be cured
when the [illegible] [illegible] the Court can
[illegible] [illegible] of [illegible] but they [illegible] because
[illegible] constituting the [illegible] [illegible] the
[illegible] not [illegible] the [illegible] [illegible] pre-
sumes after verdict any thing whatever
[illegible] of fact [illegible] [illegible] to warrant
the finding. [illegible] [illegible] that
which is necessary in point of Law merely.
[illegible] [illegible] in point of Law only
necessary to warrant a [illegible] [illegible] would
[illegible] [illegible] [illegible] that the jury
[illegible] [illegible] [illegible] of the Law. [illegible]
[illegible] [illegible] [illegible] there [illegible] [illegible]

be

[illegible]

[illegible]

[illegible]

or a plea which is insufficient, if where the verdict is found for the Defendant. A repleader is never awarded after default, for a party letting it go by default confesses the things in issue for nothing is known. So there can be no repleader, for there is nothing to ground a presumption upon. So after a special verdict, for there nothing is to be presumed: all the facts being particularly described. The same rule holds if a demurrer be over- [illegible] [illegible]. But in some cases judgment will be arrested for the insufficiency in the pleadings, and even though nothing is cured by verdict. The rule is this, if the verdict is in favour of the party who on the whole record appears to be entitled to judgment, he shall have judgment however faulty the pleadings on his part on which the issue is taken may be. So if the declaration be insufficient, the plea in bar is

defective:

[illegible]

[illegible] 160.
[illegible] 151

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Bleeding and Blistering

[illegible]

Opposite Remedy

[illegible]

Plea and Demurrer

[illegible] given to him [illegible] [illegible] immaterial.

[illegible] Ld. in [illegible] whether he [illegible] a [illegible] when the [illegible] and he an [illegible] in the Negative. When the issue [illegible] is joined on an immaterial point [illegible] and Judgment is for the Defendant the Plaintiff has no Remedy. He should have taken [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] may [illegible] immaterial if found the other. But if an action is brought on a Bond [illegible] before a [illegible] any [illegible] of [illegible] been [illegible] found for the Plaintiff [illegible] immaterial but is found for the Defendant [illegible] immaterial. Hence it [illegible] that an immaterial issue [illegible] is but matter of form and yet an immaterial issue is an incurable [illegible]. An immaterial [illegible] may [illegible] be rejected and [illegible] in [illegible] [illegible] may make it material [illegible].

Pleas and Pleading

[illegible] singular that although the [illegible]
is a matter of [illegible] yet the [illegible] may
make it [illegible]. The [illegible] of the
[illegible] it [illegible] of the
Jury after [illegible] the part specially
[illegible] of their [illegible]
if the Record is not [illegible] by the [illegible] — [illegible] 388
[illegible] but will give Judgment on the — [illegible] 366
party without regard to the [illegible] of
the Jury. So if the [illegible]
[illegible] and the Jury finding the [illegible] on
[illegible] John [illegible]
[illegible] this is [illegible].
[illegible] is [illegible] a [illegible] — [illegible]
[illegible] but only a [illegible] and [illegible] — [illegible]
[illegible] by a [illegible] the [illegible] — [illegible]
[illegible] already [illegible] in the [illegible]
[illegible] the whole Record. [illegible] there — [illegible] 1140
is no [illegible] but that can [illegible]
[illegible] the [illegible]
through the whole Record [illegible] can be
[illegible]

[illegible]

[illegible]

[illegible] with [illegible] There can be no judg-
ment after [illegible]
[illegible]
[illegible] sometimes [illegible] to
[illegible] the
statute of Jeofails [illegible] the [illegible] is
[illegible]
[illegible] be [illegible]
[illegible] a [illegible] of
[illegible]
and of [illegible] for defect, in plea-
ding: But judgment may be arrested
for defect in the verdict: if the jury
find only part of the issue, omitting that
is material, judgment must be ren-
dered on it a venire de novo:
The reason is that in this case a ma-
terial part of the facts on which the
judgment ought to be rendered are not
ascertained and the court can ren-

der

[illegible]

[illegible]

[illegible]

[illegible]

Pleas and Pleadings

were alleged relating to the same words.
[illegible] yet [illegible] declaration would be
good on Demurrer though after General
Judgment would be arrested: But the
contrariety [illegible] the rule that whatever is fatal
in ground of [illegible] of Judgment
cannot be [illegible] would be
bad on Demurrer [illegible]
[illegible] in pleadings: But here Judgments
[illegible] because the defect is the count.
Clearly there is [illegible] in the
declaration [illegible] good [illegible]
[illegible] Demurrer but the [illegible]
[illegible] ought to have been applied separately
But if several damages are alleged on
the several counts the Plaintiff may [illegible]
[illegible] on the bad ones and take Judgment
[illegible] on the good ones.
[illegible] necessary [illegible]
[illegible] the Defendant is charged with
calling the Plaintiff a thief and in the
second with calling him a liar and

Clement

[illegible]

[illegible] the [illegible] [illegible] the [illegible] [illegible] [illegible]

would be, if the cause of action were laid in two distinct counties: still if different parts of one entire cause of action are laid in the same county and damages are assessed, judgment will not be arrested though one part is good and the other bad. So in an action of slander if the words charging him with being a thief and liar are laid to have been spoken at one time judgment will not be arrested for the reason given to defeat a cause of action: the circumstance of calling him a liar is immaterial and where an immaterial circumstance is added to the cause of action it will not vitiate the verdict. The proximate reason is that they gave their verdict on that which is sufficient. Where judgment is arrested in these cases, whether for misjoinder, misnonjoinder or other cause, a venire de novo is awarded: but if it appears to the court that the plaintiff is entitled to

Dud 325
4 Bl. 342

Dud 325
4 Bl. 342

drawing: and a nonsuit is entered to avoid the drawing. But the rule was discharged, as it was in fact an act done out of court in the latter case, and irregular. The other ill effect of the judgment will be another bar the jury will be obliged to find the plaintiff's property and damages, and on the good result of these differences are ready for arresting judgment, or have arrested and in fact the cause of arresting judgment are distinct: but unless judgment may be arrested for bad cause. In the crowded [illegible] commencement of the jury, after a verdict two lawyers discussing [illegible] the merits of a case, the verdict was of the jury to [illegible] the jury is also considered arrest judgment. So if the successful party [illegible] with the jury, [illegible] is [illegible] nothing after a verdict in England

R. Ex. 1. 2. Ram. 1. 5. 384. 1. R. 2. 5. 1. 2. 1. 2.

Rule 13 Ed. 1. c.

Plaus and Findings

England: One of the parties involved or is so nearly related to the party into is a person for a principal challenge judgment could be invested: Any other or nearly related to the bail of the party Kirby 184 274
a person to such a challenge
is a ground for such another accepted
is a person having been arbitrator in
the cause could or has power an claim: Kirby 181
or by law and attorney: The rule
here is if the incumbrance go to the im-
partiality of the juror said would be
good cause for a principal challenge
but good cause for arresting the juror
after he verdict. The presumption is he will
be disabled least by force of opinion: Kirby 3.
if he has been attorney in the cause
could not an incumbrance which
is even no presumption of partiality in
the juror is no cause for arresting judg-
ment. Bond is given to secure for a
principal challenge: 1st part of sec
bond:

2 Swift 38. Further though it goes to his credibility
Daly 66. yet if the party have it in record to make
the challenge it ought to be received in
court of justice. For then waving the
consideration of one of the laws, he should
bind the cause in the first place by
grounds for a peremptory challenge, yet
if not grounds for an arrest for as the
reasons of the jurors are in record they are
capable to be known to the court. So he
should have waived himself of it before
offering objections given by a juror
in the general principles of law is not a
ground of arrest of challenge: for if he
Daly 66. supposing his opinion would be grounded
on arrest thereof claiming it would
bind till all matters be received. It
has been decided by the supreme court
of Connecticut that if the previous
discussion on the merits of the cause appears
clearly not to influence the juror's
opinion it is no ground for an arrest of
judgment

Pen and Drawing

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Plans and Bearings

[illegible] or [illegible] alteration, but the [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

Plea and Proceedings

delivered they before the Lord Chief Justice Wright here and put twenty pounds for costs.

The Jury upon the issue in manner following. Upon the Defendant's pleading and being prepared hereto, although in hand and saying and praying the Court that on forty pounds from the goods on the said Jacob being paid to Plaintiff satisfaction is insufficient to satisfy

Plea and Pleadings

New Trials

1. Petitions

The Application for a New Trial is always upon motion: that is a rule to show cause why the motion should not be granted: If the motion or rule to show cause is granted judgment is postponed: But suspending judgment is not granting a New Trial: the rule may be a New Trial, and dispensed in Bank: and showing cause is not granting a New Trial: A New Trial is granted by making the rule absolute and is discharged by a general thing to make it: The motion only postpones the judgment then, and prevents it being entered up: So if the rule is discharged judgment is entered up: If not discharged then a New trial is ordered and judgment is not entered up till the Rule Nisi is discharged: the Proceedings altered

cation

[illegible] } for a new trial to [illegible] is always
to move before judgment [illegible]
[illegible] at any time before judgment but
[illegible] [illegible] granted [illegible] [illegible]
application, [illegible] [illegible] are always
[illegible] [illegible] [illegible] they [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] that [illegible] [illegible] of the [illegible]
[illegible] the petition [illegible] [illegible]
[illegible] the [illegible] to the petition, is
that [illegible] [illegible] [illegible] to
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] the [illegible] the Court, [illegible]
[illegible] [illegible] [illegible] continued
[illegible] in the [illegible] [illegible]
[illegible] occurs however that new trials might
[illegible] have been [illegible] after the Statute
as well as by petition [illegible] [illegible]
[illegible] that the Court might now
[illegible] that [illegible] [illegible] that
[illegible] [illegible] [illegible] [illegible]

[illegible]

Clear and Convincing

rule of the Interior Court, but it may be obtained in the Court in motion in a certain class of cases; viz: where the objection to the record might have been taken by a bill of exceptions. The way is perfectly clear in this case, allowing the record to be set aside and a motion as may thought proper. It is determined that a bill of exceptions ought not be signed in the Court and in consequence may be taken by a motion for a new trial.

Consequently no time was limited within which a petition for a new trial ought to be made, but it is thought since the year 1844: and by Statute it must be within three years after the United States

Stat. 1844.

So that the motion must be made within the limited time of the term next after the trial or that the Court extension may be made after that term and within three years after trial: but under circumstances by motion it must be made

New Trials

New Trial } before judgment is entered. The petition in Bankruptcy states the grounds of the application just as in any other petition. The petitioning party is bound to prove it or forfeit it, and he may create a declaration but though the Commissioner is recent, still there must be a hearing on the facts. The Court must act after a judgment recently heard the party opposed and is bound against the application for a new trial. The singing a petition is an exclusion. I must adjourn the judgment accordingly the other party may proceed. If I set aside the execution I do not prevent it being entered as a Bankruptcy but executing it [illegible]. The application for a new trial is according to the general practice as applied to the Bankruptcy Court. To the claim of the party making the application, I must [illegible]. The interests would not in general be served when [illegible] the party

[illegible]

Plea and Pleading

from one: Now when the claim is hard or unconscionable: So Mr Fonblanque says it is held not in the case of Usury though it may be known of no precedent: and it appears that the damages to which the applicant is entitled are very small they won't grant a new trial: if to nominal damages the court will not do it: they will not to the evil [illegible] of suits: but as by discretionary the Court in granting it cases manifestly [illegible] the claimant is not entitled strictly speaking: So they may compel the applicant to depose under oath any fact relative to the cause: So also they will require him to enter into a rule, to admit certain facts of which there is no doubt when by difficult to bring up the witnesses at a future time: So they may compel the production of Books and papers [illegible] any thing which is reasonable [illegible] and compel them to attend: So is

Plea & Pleading

3 Blk. 391. 2 D. Rep. 4 Burr. 2080 Pot. 358. 2 Wil. 30 [illegible] 3 Burr. 1695

[illegible]

New trial, } examination of witnesses who are infirm or going abroad though generally they are
with Ch. 64. to be taken only by [illegible] to Commission. In this case a fresh trial may be given. In England the grounds of the application of any thing that has been done at the trial, the information on which the Court is based, is to be taken upon the judge's Notes of the case. But if the grounds is not any thing that took place at the trial, the information is to be received by affidavit.
Affidavit also in lieu of Commission
Stayed also by Court of Exchequer for the motions made before the same Court that have the case the first time.
Motion in England that is at this time and then the motion is taken before the Court at Westminster Hall to be heard in Banc or information necessary. Before the Supreme Court it must be very apt in some case, if have the motion is received for the time for having been taken by time the

Clear and Strong

Second time: Thereby necessary to inform the other Ag. and this is done by a Statement in writing and signed by the presiding Judge. In a general rule the Power is not transferable of the certificate to Court in granting or refusing a new trial: for the Reason stated in Crown case it is permitted: as where a new trial is granted in cases in which the Judge to grant it under any circumstances: it would then in every case be such case as Stephens in England: They delight a person to be prosecuted for Crime and acquitted and then on new trial convicted: it would in well be cruel: To be sure postponing a new trial is a great Evil but granting is sometimes a Greater Evil: It should be left to record to be granted by a single Minister of the Crown only by the Superior and County Courts: It is the origin and antiquity of granting trial by Jury here and Eng

land

New Trials

Delight

Stated Delay

Trials by Jury

3 Bl. C. 387, 8
Stage 395.
1 Bl. 212, 3.
Prat. 648.
Bac. 37
3 Bl. 385
Bac. 131
131

dictionary: Challenges by jury were allowed in the time of Edward III. they had not till Cromwell's time 1654. In the reign of Edward III. new trials were granted for misbehaviour in jurors: In Cromwell's time, the cause only and of evidence changed or offering evidence of misbehaviour: or to that time misbehaviour was the only cause. Security of state in wide extend. Liberty new trials have been granted in England after trial at bar or after trial at Nisi prius before the Court in Banc: Formerly it was different for the jury that the application was before the Court, which had directed the jury: But this reason was not sufficient for it did not apply in the case of misconduct of the jurors or of the jury in Banc. Being a new action otherwise: new trials in Banc are before the whole Court, never but since results of a local power

Bac. 134.
Bac. 135
Cro. Car. 256.
Sty. 467.
Noy 108.

over

permission of the Court. The grounds are the probable importance, the probable truth or difficulty of the case: and in general to prove a rule that a new trial may be granted in all cases of sufficient importance, if it appear that injustice was done at the first trial. They ought to be granted not principally to relieve the interfere and prevent their being granted even in cases of injustice: as where the obligor is paid, and having lost his receipt, recovery is had: he afterwards finds it & yet no new trial is granted: this is in civil: it would be encouragement to

New Trials

Salk 646. Pleu 365 6 Mod 309. 658

In Connecticut a new trial is granted in such a case: If the case is of inferior consequence new trials will not in general be granted. In England it seems to be a general rule that motion for a new trial cannot be made after judgment in error & judgment under seal unless it appear that the ground

2 Bur 2153 4 T.R. 755 1 Bur 465 465

New Trial. } of motion for new trial was unknown at the time of moving in arrest of judgment. 1st Saul. page 22 nor are we reason to this rule but may for an different one:

Salk. 396. Bull. N. P. 325. 6. The trials the motion in arrest ought to be tried first for why grant a new trial if judgment can be arrested? It has been holden that where there are several Defendants and all are convicted or part are and part are not no new trial can be granted as to any one for this and the judgment must stand or fall in toto

2 Salk. 550. 2 Ld. Raym. 1. 10 Mod. 235. Bull. N. P. 326. 6 Mod. 138. this obviously calculated to avoid injustice for otherwise an acquitted and the other convicted: hence no new trials can be granted however strong the motion: for the person acquitted, has no reason for asking a new trial: indeed in one case

1 Ld. Raym. 138. the rule is denied So it may be granted or refused in the original authority cases for granting new trials.

1. Want of legal notice: This is good

cause for a new trial. In Kentucky in civil cases or actions, affidavits may notice in evidence in England. In Civil & in Kentucky twelve days notice is usual even longer. Seldom affidavits are required from the party the effect of a rule. The exception is waived by appearing. The Court Court occurs in the case where the Court must order a rule of reference. For Defendants no notice is given at all and judgment is sometimes against him. And the Court is a court of law. If he is entitled to a new trial he has a right to be heard. He has had no trial. If they could not satisfy it thought it was a case of injury. If they do refuse, however there is an injury it can not be brought into view into another court any more than a deviation from the rule of practice case. II. Nonfeasance may be given by defects or omissions of the judge. Where judgment was obtained. As general that through interest, bias or defect of the

Fed. Trials

Smith Ch. 435 428 Bal. Ch. p. 319

Ky. Ch. 10 Ky. 112 & Ky. 105 Bal. Ch. 327 Sec. 200

Issue of Fact

he would any instruction or opinion any other evidence or point out the jury on evidence in point of law. There are instances where if evidence being objected to and being improperly admitted, though it is proper for a new trial, still it is a rule that the incompetency of a witness (although not known at the trial) if not objected to, is not of itself good a new trial: particularly where it might among other things have excluded the superior court in 1795 granted a new trial in this case preceding even though the evidence was written. So they in strongest terms of it were bound.

Illegal Hearing

III. Defects or incompetency in the jury or jurors are not cause for new trials: Defects and incompetency here mean the disqualifying: But if the verdict was such as, or might have been given if otherwise, and the defect or incompetency is such as to deserve to take advantage of it: in that case the new trial will be granted.

5 Rec. 845. 7 H. 254 Ut. 80

Cases

Hess and Hennessy

Does if not in accord to challenge to a case in Stilly a new trial, was refused on the ground, the such was in the nature of motion in arrest of judgment, not granting a new trial. In England it generally taken advantage of by a new trial.

New trial

Stilly 1

IV. as the misconduct of the jury applicable unattended to, is ground for a new trial: Does if they take the decision to guess of chance: Is not any thing that prevents fairness of trial is ground for a new trial. Is not necessary that all the jury should have been guilty of misbehaviour for misbehaviour in one is sufficient: they where the counsel has said that the Plaintiff never should have a verdict let their prejudice what intended he might a new trial was granted. Unanimity is necessary consequently the misbehaviour of one is sufficient to vitiate the verdict. In early times perfect unanimity in the jury was not required: but

Stilly 652
Burrill 81
2 Lev. 145
3 Bac. 259
" 258

Salk 645

3 Bl. 1351

a

Rule 3

for a long time past it has been the practice in England and in this Country, if the defendant appears upon an attachment issued against him, he is then allowed to plead to the action and the defendant is not any where but the expense of serving it have occasioned it, if not unnecessary, then the rule is set aside. So if in the first place plaintiff has it must appear at least that the Defendant is the person that was opposed and has been prejudiced by the rule being set aside, but by permitting the defendant to come in, appear and answer in the first case it shews only that Defendant the Law will not suffer him to litigate about after the second is recorded. In England the first other particularly to appear in a Court, are called upon till they appear and after they are called upon answering or pleading before the second is returned to the party [illegible]. This is Pure

Rule for Defendant to plead after service of Rule

Rule of Court for Defendant to appear and plead

Plan and Meetings

Some to accept them to an agreement. Yet the Friends is not satisfied by the page calling in Friendship: the only thing which seemed there should be first: it did go to the Friends of the Society. But if the Government or Friends of the Society of either party and the Friends is prepared to treat, by any means these may be obtained. But to remove the Jury from the Hardship, arising from the case as to attendance, causing and obtaining Jury Friends have been prepared: for these opens, the Jury are not allowed to have either Food or Candle. Jury Friends are delivered out of Court to the Jurors that Life and not hearing: the Jury may come out and they Deliver their public Verdict. So to only a Matter of Evidence the case, by Consultation with the Counsel. The Deliverance of Jurors Verdict to this effect, viz. If they will to treat after Deliverance, they not

Friends Friday

Friends Jurors

Friends Dec. 9th 1675 & Dec. 10th

[illegible] Pleadings

[illegible] [illegible] [illegible] period only [illegible] of
[illegible] change it is fatal if the party
[illegible] [illegible] [illegible]. But [illegible] [illegible]
[illegible] [illegible] allowed in cases of felony, or in
cases of misdemeanor, [illegible] [illegible] be
so allowed, where the [illegible] [illegible]
[illegible] of them [illegible] [illegible] necessary to
[illegible] conviction; [illegible] [illegible] [illegible] con-
clusion where it [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]: for in such case the [illegible] of
presence of the Defendant is necessary:
Even where a mere fine is inflicted:
So in such cases a [illegible] [illegible] judgment be
confined [illegible] [illegible] [illegible] [illegible]
[illegible] which are not necessary for the
jury and never confined at all. This
is very dangerous in cases where
there is a particular interest [illegible] it is said
in [illegible] [illegible] [illegible] that
a [illegible] [illegible] [illegible] [illegible] on their
[illegible] [illegible] [illegible]. This [illegible]

and

could be true: If a juryman has any knowledge on the subject he ought to make it known in open Court and if not the verdict is bad. This seems to be a point they have a right to enquire into and to hear any evidence by counsel touching: In pursuance of the above principle, the jury have no right to examine any witness after retiring: nor to ask him questions in a lately before: if they do they not give a true answer if they do they are liable to be punished for their verdict: and in England they are said that the jury can not take out any writ for evidence actually entered in the court but not without the consent of the counsel of the parties or the judge: Most days of the sitting of a court when both sides the verdict is good: Even independent of the time before: it may be strong as our decision and weak on the other: Hence the necessity the party ought

Hawk. Pleas 3

3 Bl. C. 374. 5. Cod. 133 5 Bac 289 Ex. Gally in Ea. 4 Geo. Vaughn 157

Co. Lit. 157. 5 Bac 288.

Hob. 229 Co. Lit. 227 Gilb. Evid. 10 Mod. 250.

Page Trials } ought to have a direct right to believe to the
jury the evidence which was exhibited in
Court, for they understand it much better
by perusing it the Bench. the writ
to Deliver you to the jury as matter of
course: But if the jury take with them
any constitutional evidence not exhibited at
Sessions the trial, the Court and Officer were in
Error and a new trial must be
granted. They have no right to found a
verdict on evidence not exhibited in Court.
1 Rep. 11 Not through fancy or ignorance mistake
Cro. Eliz. 89. the Jurors, while they have no right to
Sho. 100. lay to the great Seeing generally. But
I fear it was so not all the matter of
this law to inquire by mere hordiel, that
have jurying: but only for a breach
of a statutory rule; our Court of Office
to other may a person plead lately a
gainst the verdict of the rules, but in this
case he is left all and to do: he all
have been nothing in Court of judgment
and

Clear and Meaning

are concurrent with, nothing to do with New Trial. V. It may be a ground Trial.
though not always for a new trial, for the Jury to find a "Special Verdict" when directed by the Court to find a Special one: The reason of requiring a Special Verdict is that the Court may have the Facts before them and consequently may more easily to apply the Law: Yet this is not a Peremptory: the Jury are not finable for they may give a General Verdict if they please: tho not illegal: But if they find the Law in the Court as the Court first proper, a new trial will not be granted though a General Verdict is given, when a Special one was ordered: thus it seems by the finding a Verdict contrary to Law that is the ground of a new trial, and not the finding a General when directed to find a Special Verdict: There is one case where new trials were refused, but

that

Mod. 5.
Str. 251

New Trials

that was after a Trial at Bar.

VI. A Verdict being contrary to evidence is ground for a new Trial in England and Smith says although in Bar we ought to be sure, there is formerly doubt concerning this but now it is settled. Yet the Court being strongly inclined in favour of the unsuccessful side, will not

for granting a new trial: Indeed the rule ought to be that it must be so that no evidence be produced or material accounts to any thing in favour of the party for whom the Verdict is found. But when of the Verdict is equally against the weight of evidence, a new trial will be granted: So where the pealy of evidence are nearly equal none will be granted but where there is a great inequality a new trial will be granted though there be some little evidence on the other side: There has been much a contrary of on this point, but this is the rule that the Courts

Cro. Jac. 57. Bac. Abr. 307 & Sq. 1103. 1142. 3 Bac. 392.

Juries are the proper Judges of the evidence and that the Court assume the prerogative of the Jury in allowing a new trial. This in Fundamental Principle is not true: they don't assume to themselves to try the issue themselves but only pass it back from Jury to Jury & over again.

Jury & Trial

VII. Again if the Jury have given a verdict on a misconception in point of law or generally against Law or Evidence a new trial may be obtained. So it often happens that the first two Juries are made a wrong conclusion from evidence. So if in action against the executor of a promissory note and there is no proof of Notice having been given to the defendant the Jury may justly to it, because they sees for the Plaintiff. In some cases application of this kind have been unsuccessful; but it was the Court were not satisfied that they were the [illegible] [illegible]

Salk 650. Str. 90 [illegible] 645 Bl. R. 978 Cowp. 400 [illegible] 1 Ch. Cas. 19

[illegible] be granted of course, where the ground
(6 [illegible]) of the application is very hard [illegible]
[illegible] that substantial justice has
been done a new trial will be granted. So
1 Bur. 385 where the Plaintiff is entitled only to
2 Wils. 5 nominal damages but verdict is for the
3 [illegible] Defendant a new trial is granted merely
[illegible] 335 to obtain the cost of [illegible]

VIII In certain pleadings of damages a new trial [illegible]. But this is only in [illegible] cases where a clear rule of damages is [illegible]. In case where the action sounds in tort and damages are [illegible] there are subject to discretion [illegible]
[illegible] be granted. So in an action on bond
[illegible] the jury ought to make allowance
[illegible] 135 for the interest, a new trial ought to be
granted. But in [illegible] damages
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] granted
[illegible] the action [illegible] [illegible]

Be

[illegible]

[illegible] of an oath of the kind [illegible] [illegible] [illegible]

Ellen and Tolling

Lewis v. Fitch

and the Condition being void, for
this is a plain and strong it would
appear: In some case of very great
hardship, we have had a mode pro-
vided for relief. But in this case the
the plaintiff has had the use, exclu-
sive, and could be granted: but
they are as well able to have it decided
so by law, there is none of the rules of re-
medy provided in the case of Setting
Aside in case of Fraud: or by Mistake
Stellar in no case any it ought be
prevented even in this case: Although
Dan. 105.
2 Atk. 95.
3 Ch. 294.
neither the same Principle: In the case of
Setting the Account by way of Amend
I may even prevent the mischief: by analo-
gy to Strong Case: But in case of Ill
Ill. 27.
3 Ch. 357.
Fraud and Setting Aside Trade, when
to grantee. In the case of for good for
Ill. 27.
3 Ch. 357.
Illegal consideration for Injury to the Plaintiff
Ill. 27.
3 Ch. 357.
Lifts Bought the Mortgage and made
to Creditor: And the Same Principle
is not

Chief Justice Kent's Judge

not would weight be obvious that would
arise from leaving the new trial, regulated
by statute in both cases. This Judge
is quoted in the case of Blanchard. The early
decisions generally have been adverse thereto
(see Jones v. Andover & the judge's
Digest 416 page). Also by generally agreed
to be a better statesman = Chief Chancellor has
strongly contended in one or two cases that
Judges ought not to grant new trials, in a
case of tort unless the damages upon the
second trial appear extraordinarily excessive.
He says the substituting the Court for
the jury. But this alternative would
applied in all cases would be intolerable.
Still we allow that in such cases new trials
may be granted. Chancellor frequently ap-
pears to be a better statesman than Judge.
Upon the point of application he is now always
opposed to the majority. The public is now
quite settled against his opinions. If Lord
Mansfield in his long in point of constitution

law

Jackson v. Spafford
Jan. 394
1 Rep. 399

Chancellor Kent
v. 205

Grounds of trials — 1 Rep. 16 — 6 Rep. 39 — 2 Ind. 90 — Cath. 350

so that the Plaintiff recover two marks a new trial will be granted: So if on bond they calculate the interest wrongly: But the Plaintiff may prevent a new trial by relinquishing the excess.

X. Here we have a mistake of the Counsel in pleading a wrong plea, is ground of new trial. The state order it was pleading in England wrongly to be done in case where a new trial was granted for this cause though the law is we are here shown that if the Counsel on both sides and the Court had not been before the Jury be charged a new trial ought to be granted. In Connecticut is more necessary than in England, for in England by the statute of Jeofails the Court of Error may disregard many errors but here the Defendant is two ways relieved: It is clear that any defect of the mistake is not good cause for new trial. The remedy in this case is against the Jury

1 Chitty — 3 Rep. 31 — 4 Com. 202

5 Rep. 28

5 Com. 70 — 2 Chitty 345

Pleas and Proceedings

In the course of the pleadings there was negligent pleading, and leave to amend. But in Count Mr. Gould's counsel whether a new trial would be granted when the defence to be pleaded is a mere quibble in law. There is no case of this kind but by recommitting. In one case in Espinasse, the Court refused to postpone the trial when the defence was unconscientious. When application is made on the ground of insufficient the pleadings plead the defence so that the Court may see whether it is sufficient in law. For if the pleadings are sufficient in law then no new trial can be granted. He must state likewise whether he was prepared.

XI. That a unanimous verdict was offered the first trial through misfortune or some inevitable accident, as if process be by sign manual or the like, in such case a new trial should be granted. Every it be absurd in itself to attend

pleading

New Trials

1 Bac. Ab. Tit. 3

1 Bac. Ab. 13 & Espinasse

8 Bac. Ab. Tit. 3 & Com. Dig.

Chap. xxxi. Genesis.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

is sometimes granted of first impression

New Trials

[illegible] a new trial is not granted for the

[illegible] 1 Bos. & Pul. 48.

sake of a better title testimony the

[illegible] 5 Bos. & Pul. 250.

party might have had by using due

diligence: it is here partly of notice. Our

Courts consider the introduction of an

unexpected witness is no ground for a

new trial, but a mistake made by

a material witness: the principle is that

if a new trial were granted the opposite

[illegible] 8 East 94.

party might produce the witness at the

[illegible] 2 East 94.

second trial after learning what the evidence

was on the other side: Our Courts have

in repeated instances refused to grant

Austin v. [illegible] 3 Burr. 1687.

New Trials for a mistake in a material

[illegible] 1 T. R. [illegible]

XII. Another ground for a new trial in

[illegible] 1 B. & P. 98.

Criminal is the discovery of new and

material evidence after the trial. It

is true in one case that this is good ground

for a new trial in England but the pre

vailing claim is otherwise. Thus in

[illegible]

Pleas and Pleadings

[illegible] only where a receipt [illegible] [illegible] [illegible] and a [illegible] in consequence of the [illegible] of the receipt [illegible] having been [illegible] [illegible] [illegible] before the [illegible] of the rule is that the party might then [illegible] the evidence at the trial. [illegible] trial would not be granted in such a case [illegible] the party who [illegible] [illegible] [illegible] [illegible] the [illegible] must be material. 2d That it must be discovered since the trial, and that the party could not by common diligence have been obtained. 3d petition for a new trial must [illegible] the ground [illegible] the evidence [illegible] ~~[illegible]~~ that the Court must judge whether it is material; and that it may be seen to be [illegible] from that [illegible] [illegible] [illegible] the [illegible] to be [illegible]; [illegible] [illegible] [illegible] [illegible] may [illegible].

2 Swift 270.
[illegible] [illegible]
[illegible] [illegible]

Chancery &c.

XIII. If the case be left to the Chancery for a Chancery to report, when one that fact not being known at the time of the sale by the party against whom the fraud was given, was discovered in England as well as in Ireland there is very little in the Books on this subject. There is a case in 2 Ch. Rep. 1 where a case had been referred on the ground that the party had been deceived before hand. I doubt if it would be found any great hardship on the ground. Doubtedly it was convenient to permit the party for new trial when they were few in number. And the Court of Equity used to issue the fraud to be tried by a Court of Law. This is now not so. A Chancery would not, but I should doubt if a Court of Law would not also in such cases a fraud would be also in such to be a fraud.

Ch. Rep. 1

Ch. Rep. 1

Doubtful.

XIV. The misconduct of the parties is in single cases a ground for a new trial, as

the

Jury Trial

of one hundred the jury. So if he keeps out of the way to prevent. So if he influence a juror to give for him in not indemnifying he will be a proper for a new trial. So if the attorney of the prevailing party was any improper means against or with the jury, falsifying the hardship of his client case, a new trial will be granted. Any form of chicanery, any thing to influence a jury corrupt, give their verdict, a complete new trial. Rules of Jury for two trials being granted:

General Rules &c.

General Rules

Formerly it was broken that have been more not granted in action of Ejectment for judgment was not over clutter, so another action might be brought. So by now the same reason does not apply as in other cases. In England it is not conclusive for the parties and merely terminal: So the trial Plaintiff

Common Pleading

may bring a number of actions for the same thing by substituting new lessors of the Plaintiff, one after another. It has also been common in that new trials may be granted here as well as in other actions when the verdict is for the Plaintiff but not when it is for the defendant unless for some uncommon reason. The reason of this difference is that where the defendant prevails he remains in possession and the Plaintiff [illegible] for the Plaintiff may at once bring a new action or have a new trial. But where the Plaintiff prevails there is a change of possession which is a great inconvenience to the defendant unless he can have a new trial. It was formerly said that after two verdicts in the same cause and both the same way new trials ought not to be granted. This not now true. For though such circumstances render it more difficult to obtain a new trial yet it will

New Trials

2 Atk. 648. 650
4 Burr. 2224
Stra. 796
3 Burr. 252.
[illegible] 2214

1 Vez. 22.
2 Atk. 449
1 T.R. 37.
3 Bl. R. 387
4 Burr. 2118

[illegible]

[illegible]

[illegible]

Pleas and Pleadings

in case of felony as well as in other cases in favour of the Defendant. But by the rule under the 2nd of the Twelve Tables, that where the offence had arisen in a private nature the general rule is, that nothing is to be taken against the Defendant though it may be in his favour. But by the same rule there was a prohibition against the Defendant being acquitted in consequence of fraud as by embezzling stolen goods.

Q. When the acquittal has been obtained by any prevarication of the Judge or point of law.

Where an acquittal information a Hundred can not be granted as it is part only of a new granted in the Hundred but and also relating granted in it: for the Plaintiff claiming damages and was that the Defendant is liable for the entire offence.

Pleading a Hundred in Connecticut

Hund Trial.

1 Leon 194
Ff. 9. 8. 99
9 Rep. 65
3 Hep. 484

1 Ch. Rep. 65
Ff. 9. 38.
Hard 93
Cro Car 516
Q. Jac. 9.
1 Hawk 326
Leon 289
contra.

4 Hawk. 753
3 Hep. 90.

Cro Car 267

out

Trial Proceed.

[illegible]

Costs

[illegible]

[illegible]

Judicial Proceedings

Judicial Court

In proceeding on this subject, it seems obvious that the principles, which have been in all cases, that the power of assigning dower under a mortgage in England and adopted in all the States, and the principles on which limitations are founded, are the same. All that it can be said to be an exception, directed by a judge, or a Superior Court to examine the records of an Inferior Court, and if it appears it ought to reverse the judgment if not to affirm it. A judgment upon a bill of Exchange does not pass into judgment upon a Promissory Note. It does not pass as a Debt, for the Court have no authority to enforce a judgment till they have determined, consequently if by the Court, then they have no authority to pronounce all the

Statute

Write
Bill &c

refer to parts to explain the bond and
compel the payment of money and give
an account, or in aff. of a defendt
show cause why injunctions &c.

1st Form is Law 2. Form is Fact.

The former is left to general and most
important. Error in Law means that there
is some fact existing that does not appear
at the time of trial, and not any that
does appear which makes the record or
proceedings for no writ of Error lies for a
wrong judgment unless it appears in the
record. But the error in Law complained
of always appears upon the record. The
case is then stated upon the record and
the judgment determined must therefore appear
and the whole case as much as
the whole case is a commission to the Ex
aminers, and no enquiry can be
made out of the record you must come
into it then. By the way, there are many
things that not appear on the record

in

Pleas and Pleading

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Pleading

[illegible] judgment [illegible] the Court overruling a plea in abatement. the Defendant can't bring a Writ of Error till after a trial on the merits. for there may be no [illegible] but if on the trial he fails he may then bring his writ of Error on the decision of the Court in rendering judgment against his plea in abatement. So in the action of account, the Defendant pleads in bar and the Plaintiff demurs. the Court render judgment "quod computet" no writ of Error now lies; the question goes to auditors and they award that the Defendant is in arrear. then the Defendant may bring a writ of Error on the judgment of the Court against his plea in bar. So in the case of partition: no writ of Error lies until the writ of partition issues, a return is made and judgment rendered by the Court which [illegible] the partition [illegible] with his wishes. It is no objection to the Defendant's bringing a writ of Error that [illegible]:

Writ of Error

[illegible]
Tidd 757
Cro. El. 655.

Sept. 8th. Dunbar v. Cooper where there is a fault in the Declaration as where an action of Slander is brought for calling the Plaintiff a Cheat or Villain: the Defendant suffers a Default. He may bring a writ of Error and reverse the Judgment for the Declaration is altogether insufficient: But if the defendant pleads to issue and he has made no defence: and the latter exception to the effect of the Declaration, altho he might bring a Writ of Error afterwards, if the Declaration was particularly defective. But if the Defect is such as is aided by Verdict and Writ of Error lies: Declarations, Pleadings and Proceedings are made up certain Substantial objects so that they would go out in a General Demurrer or in a motion in arrest. This is adapted to other parts of the Pleadings as well as the Declaration for the Transgressment to be mentioned and no cause lies in where the Defendant pleads the Fact and that alone may be pleaded in any

Stat.

Bills of Error

stating a number of things which merely amount to exceptions: The Plaintiff instead of commencing merely transcribe them and they are found in favour of the Defendant. Now the Plaintiff may revoke the judgment and bring all others on the record. There is a good bill of error if the wrong alleviment and is not pleaded, but a judgment of Error but if pleaded by a bad judgment of Error. There is however this exception to it, that if the bill is absolutely void in itself so that no judgment can be made out of it in favour of the Plaintiff the Defendant shall take advantage of it by plea in abatement or a Judgment of Error. As if a second Court brings an action in Mar and Mary and stating in her Declaration that she is married and no plea in abatement is made and the judgment is given in her favour Error lies. But if the second Court had no jurisdiction of the Subject matter of the Dispute a writ of Error lies.

Mich. Term [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]

[illegible]

[illegible] Dr Sol. Pitt

[illegible]

[illegible]

[illegible]

[illegible]

Pleas and Pleading

against [illegible] which are the [illegible] — Writ of Error
[illegible] the Judgment. But he is bound
[illegible] to the error in the Record [illegible]
[illegible]
[illegible] the [illegible]
[illegible]
[illegible]

The proceedings in a [illegible]
[illegible]
[illegible]
[illegible] brought from an
[illegible]
error itself is according, and not a
transcript [illegible]
[illegible] that of the
[illegible] Record [illegible] that it [illegible]
[illegible]
Record [illegible] this [illegible] ought to [illegible]
[illegible] in the Court of [illegible] Record
[illegible] the Exchequer [illegible]
[illegible] not [illegible] is not a [illegible]
[illegible] except [illegible]

ought

[illegible] error; judgment is affirmed, then the Court below grant execution on the judgment which they rendered. If it is brought to [illegible] the Court below [illegible] an execution, but [illegible] judgment the whole [illegible] [illegible] to new proper judgment. When the proceedings are removed by a "Writ of [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] they [illegible] [illegible] for the Defendant is most generally appears without any notice to the Country, nothing is done but take out a writ [illegible] [illegible] before them [illegible] [illegible] [illegible] by the Defendant [illegible] [illegible] and it the proceeding is [illegible] other case. This [illegible] is very different to that of the Admiral Court. The Court of Exchequer in England is a Court instituted chiefly to try King's Writs of Error in suits originally brought or commenced in King's Bench and brought to this Court and then are tried by [illegible] the Barons of the Exche-

quer

Plea and Pleading

and practice of the Common Pleas. Mich. Term

II. Other pleas pertinent will be taken from

Proof in fact. Pleas not in fact is

a counting out of the Court of "Common

"Pleas". and so in any other case where

the Court can not properly enter judg-

ment by reason of some fact existing:

As where the Defendant being out of the

S. to the [illegible] and the

[illegible] Suppose then the Plain-

tiff desires to take judgment and Execu-

tion the first terms. Proceeding on this judg-

ment and the same is true if the De-

fendant is a citizen of the State but

out of it at the time of the commence-

ment of the Suit. But suppose the fact

that he lives in an other State is denied

and the Plaintiff avers that he was at

home in Court at the time that the

Suit was brought. This question of fact

must be tried in fact and trial a

Jury that issue is that he was. The jury

verdict

Pleas and Pleading

Writs of Error

General Issue to a Writ of Error q^d in nullo est erratum. But this you must not plead when you intend to assign the Error in fact. You must then Demur or plead, or your Writ and other fact. The Writ of Error is first issued, and is brought before the same Court, that rendered the Judgment. The Judgment is reversed by the Court if it appears in law or Error in fact which if so are found to be found to the Court at the time of trial. This is a Writ of Error Coram Nobis and the same Court issued cannot be mistaken. The following is a general and important principle. Upon a judgment is reversed the Court is to render such a Judgment as will restore the party to all he has lost and bring in all that is owing. Thus a Writ of Error which in the present day the accounts of Debt in Chancery. But the Writ of Error is taken from Chancery to Kings Bench.

The new Pleadings

Bond: James Hoindon brought an action against Robert Fulton & the Defendants Richard R. Livingston and Robert R. Livingston and the replication of Fulton with his wife - Defendants claim a lien and priority. Other persons claiming under the priority of the Plaintiff's claim, set forth that they have offered to be satisfied & the Court refused to allow the Defendants to be satisfied and the Defendants claim the lien as prior.

Opinion of Court

Decree

The Court by inquiry on the Plaintiff's bill to have the Defendants in the general action the general rule of the Court and the Court decree the Plaintiff's claim which the Court below implied have found. It does not however be offered that they in Defendants insist in the same general in the costs of their proceedings to be paid in full. The Court & after the Court below finding

Decree

Writ of Error

over the judgment which they on Oth have received at Griffith. They Mr. Ewart may be bailing in the case will also the Plaintiff's Court of Errors in the United States. They can overturn no Jury and can only act as Barrators: they in the character of the Court of Exchequer: Suppose in Common Pleas the Defendant pleads in abatement and the Writ is abated: a Writ of Error is taken to King's Bench and they reverse the plea and the judgment by rendering a judgment of Peremptory Respondeat ouster which the Court below ought to have done: But perhaps the Court of King's Bench affirm the judgment of the Court of Common Pleas and a Writ of Error is taken to the Exchequer Chamber and they reverse the judgment: Now how is the case to be tried? It must go back to the Court from whence it was brought: The Court of Exchequer

4 W. & M. c. 5.
1 Ann. St. 2. c. 16

Chamber exactly resembles the Supreme

Court

Pleas and Pleadings

Court of Errors of Connecticut = M'Fadden Writ approving the method in the Connecticut [illegible] State is incidentally different from that of England not in principle but in the manner of carrying it into execution. There when the complaint after the defendant court, they take issue in the facts that the only judgment rendered is "quod respondeat ouster" [illegible] could be prevented: Here the [illegible] the county: but yet you should the Plaintiff had proceeded the [illegible] of the Defendant, the Defendant would not be [illegible] State [illegible] by a proceeding [illegible] of judgment. [illegible] he is so far [illegible] stated that he is not bound [illegible] [illegible] [illegible] to having a Writ to process [illegible]. Those [illegible] further that a Writ of Restitution is to issue directing the party to restore the money. This is an Execution in fact: yet no part of the judgment for that is only [illegible] [illegible]

Other

Term in Pleadings

Rept. Ship

Where there is to be more of the goods placed in
paid the money, it would be a very
not thought to be proper the Sheriff office
tained to this country the judgment is not
only a transfer but a redemption of the
money which is a part of the judgment
and executed when the money has
been paid the judgment satisfied by the
same as it is England except that the defen-
dant has by law a record a company
according to the English phraseology that it
the money has not been paid over but
it is in the hands of the Sheriff no that of
~~[illegible]~~ Rectitudo ipsa non
pay to the Sheriff office in hands. So it
land was in contemplation the King
was entitled to a judgment
which was pronounced the judgment
[illegible] and a Writ
of Restitution together with an Execution
in case immediately issue if the money
is not paid they get the possession of land

Sallk. 88.

Gilb. Ev. 91.
Co. Lit. 291.
Bac. Ab.

Pleas and Proceedings

[illegible] Mary
[illegible] Thos.

[illegible]

[illegible] Defendants.

[illegible]

Judgment for Costs

[illegible] Execution issue: Nor whether the Court may grant a Writ of Error upon Bail for damages and costs and also an Execution for them: Now upon the question, whether a Writ of Error may be dispensed with to stay Execution. At Common Law, a Writ of Error is a Supersedeas to an Execution after the Writ of Error has been sued out and delivered to the Clerk of the Court of Error. It is good to stay the Execution, though it be given to any one to have out related an Execution cannot be issued on the judgment and yet may be sued out after. The same thing is now in the Court of Exchequer for where the Writ of Error is delivered by the Clerk it is a supersedeas to the Execution. If the Error be in the hands of the officer and he has an notice of the Writ of Error he may plead it in the Court of Exchequer if it be brought but if he plead it the Court will grant Execution. Nor if the Plaintiff at Common

Error Exchequer

Cro Eliz 591. 3 Bac Abr. Dany 170.

[illegible]

[illegible]

[illegible]

Illegal seizure

with respect to what follows, the authorities are contradictory. The Kings Bench certain if the bailee is a trader and he is not actually engaged in trade but is on his way to it and he dies after a time he is to be discharged. The will always be there is given, but the Court will inquire whether it applies to the case in England where no bond is given or where no bond required or it would be depriving a man of his property. The bill prohibits a person in possession from being deprived by authorities that of goods are taken by a sheriff or if he has begun to take them. What he has done is good. The court from the proceeding where it is required but where there is none. He is to decide he ought to take it.

Illegal seizure of property

The seizure of goods after is a good. If the seizure of a chest of goods to secure the payments of bonds taken from the Bank the seizure is not right where

Pleas and Pleadings

A Writ of Error has been taken from this [illegible] Writ of Error
Court reversing or affirming a judgment
of an Inferior Court. [illegible] is inclined
therefore to think [illegible]
[illegible] be the
[illegible] one of the Inferior Courts to the
Court of [illegible] [illegible]. A Writ of Error
lies from the [illegible] to the
[illegible] there it may be
[illegible] to the [illegible] and from
thence to Parliament. This is the course
[illegible] judgment in the [illegible] Bench
[illegible] the [illegible] of the [illegible]
[illegible]
[illegible] to the [illegible] and
from thence to Parliament. [illegible]
[illegible] but [illegible]
[illegible] judgment [illegible]
[illegible] of the [illegible]
[illegible] judgment [illegible]
[illegible]
[illegible] judgment [illegible]

[illegible] 1 [illegible] 280

Left Side

given to the Prisoner's friends and to the Cage: if he escaped from the Cage he must go back to the Prison after he finishing [illegible] which must not be admitted: if he on Prison or any other Prisoner judgment [illegible] go back:

Question Second of Trial

The Matter of our Prisoner's Trial is Treason: our Prisoner [illegible] of Treason against the Queen's Majesty: The Witnesses every one swore to all they have left behind a Different Cause: the Prisoner's Counsel [illegible] in favour of the Prisoner left below: but they offer also to enter his cage in Court although it cannot have any effect: the only Argument is that the Prisoner below his Counsel and he enter his cause of the Prisoner and he swore all he has left behind in Cage: the Counsel on the Prisoner's Side [illegible] Statute Intitled the Prisoner [illegible] the Prisoner [illegible] Trial [illegible] the

Plea and Pleadings

[illegible] Court below the Court will [illegible] Error

[illegible]

Writ of Error

have no title to the jurisdiction of the cause unless they are aided by the record, in which case they may be entered: But sometimes they have no jurisdiction over the Subject matter without any regard to the quantity or quality: as in the case of High ways: these must then go back to the County Courts. So in cases of complaints under the Statute of [illegible]

Assignment of Error

The Writ of Error begins by stating "verbatim" the proceedings below: That such a cause has been brought before such a Court and state the whole record and then the Plaintiff says in the [illegible] judgment the Court erred and mistook the Law and then state the errors: he [illegible] [illegible] [illegible] as [illegible] [illegible]. If the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] generally [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] and [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

1 Sau. 11

Plea and Demurrer

and afterwards Mr Foote takes the rule of law by any rule of Court to be that the pleas are bad, and ought to be the second area of the first and to provide the fragments. There is another point to be noticed: that there is law and fact in both and seems to appear in the document. The point be in Pleaded that: The reason in Mr Foote's case and a very satisfactory one: If that must be that it is to be for the jury and matter of law to the Court: otherwise you are not your than: that the is effectual in substance to the Declaration and a demurrer to the fact: There is no principle in the case but the contrary: If that be so the Defendant cannot and must keep the matter that the plea in fine is not material? This is not the first place. The Court will not lay it: There is all sorts and of the interests to take advantage of the law in favor of Such

Wright Court

Rule 78 1800 Ed. 145 1 Pent 425 Rebor 58

Saint Rot. Foote 538 & 539 in mem 1803 at 1805

day

Trials Fitzw.

being misjoined, he should have demurred and not Demurred.

3 Rotitt.

If a Defendant in any Plea or Pleading, set forth a contract by the Record, the Record of the Record, that the Defendant or a Third person appeared by Attorney or Appointed Guardian, you can be sure no Demurrer will lie against that. So if any other thing appears on Record in any Court, it should be tried, will contradict it. Another rule is that when a Judgment is contingent to a Matter to come, and provide the Plea that Verdict pass or Judgment be to stand conditional until the Matter happens: This does be a good plea to stop the Execution of Judgment and prevent the Defendant from a Recovery of the Plaintiff. Matter is fit and able in abatement to make subject of Demurrer only by Reason. But of this Matter which

Barth. 124 Bro. Ex. 67 & Ed. 4.

Opinion and Findings

no judgment could be found on the case whether the case in statement is not the usual statutory form of a judgment and if such a judgment is found in the case it is not stated in the statement. How it would be error to render a judgment against the defendants for the amount of the bonds the court finds to be due and then to enter the judgment against the defendants and bring a writ from the judgment creditor against the defendants but the case is not presented in this form. The court cannot judge of the facts in this case it is enough that the defendants and their sureties in the bond the judgment against the plaintiff demand a writ and they granted it. Now this judgment is good of the 2d and 3d paragraphs. This is not upon the ground of land where the case has been contested for a long time and the interest exceeds the sum demanded. The judgment is

Affirmed

Sullivan

10 Cr. 115
Kelly 564

[illegible] the [illegible] [illegible] [illegible]

Clear and Pleading

as a release of all suits &c. Further
general rule is that when there is a judg-
ment against several and by consent
or to save the expense they say the
judgment is entire and is usually given or
otherwise bad: Clear Pleadings is different.
The action of Trespass for assault and
battery is brought against Daniel Bay
wood, David Raymond and Joseph Hall
Esq: Hall is an infant and not served
by the Plaintiff. The judgment against
him is erroneous. Where the English
principle it could not be brought a-
gainst Battery and Stand against the
Raymonds but stand it and. But where
there are two distinct judgments one
against one of the defendants is joint
and one against the other the
affirmed: Yes in the action of assault
the judgment is joint and that
the it goes to Nidatur and is therefore
did stand is reversed and this be

Mr. Jacobs
Collings

Mr. Jacobs
Error

Judgment
Error.

Judgment may be reversed by a bill of Error and the proceedings stand and if Error arise in fact in the first Judgment both go and remain in the state in the [illegible] of the Executor who is prayed and from [illegible] attained and Executors are entitled to the property in the Executors [illegible] fresh. Then a Scire facias issues and in proceeding on it, there is error: then the Executor brings a bill of Error to reverse the Judgment and in this case and may be brought into the other point. There is an instance where the Court of Exchequer Chamber, receiving the power of reversing Judgment therein but in a case where no fact were to be tried this only a question of law arising on a

Cook. 3 Q. different bill the Court days to an and pin the bill is any Infringement of the principal and that in similar case the Court of Error in Connecticut have done the same thing.

Writ of Error

One third point: That the person who recovers the judgment is to be restored to all that he has lost in a plaintiffe, and to be imprisoned when: But Error is to be one Matter Either pues bein Colle. Mandrake: recovers takes out his execution and collects the money: by the aide of a paire of horses at the Lost: Mandrake being a bruit of Error and recovers the judgment what is he to be restored to? the Lost: but thy are paid to Edward & Cattwell, and are Mandrake and Bettenell in Debt: The court in deede a one recovers the value of the horse and it Either: he cant procure the Sheriff in the paid lost: This principle is for the value of two persons and altogether a principle of person: But if in England Tom Dickebanger find Lodge an Elegit and had the Horse paiged off to him. The Debtor is strong the defendant keeps the judge

Pleas of Error.

while the Writ was in Chancery for
behoof of the Party complained the
Writ from Chancellor and according
to the Common idea, would not be autho-
rative if he went to the Stalls of Bachel-
lors and took them from there. If a
Stay of Jury has been put under an
Exception and Stay prevents the Judg-
ment the Verdict will stand it notwith-
standing: but if it extended so, that it
was a Property Stay could have it
on a reversal — Thus by Law a
great practice in New England ~~[illegible]~~
which we have a mode of appealing
based in per Curiam on Questions. They
[illegible] to the Common Law. The Supreme
Tribunal [illegible] of Plea Pass and
Keeps when [illegible] appealed to
Court. And then delivers [illegible] Pass
Keeps to [illegible] Court [illegible]
Pass to [illegible] Court [illegible]
[illegible] (Plea [illegible]

Law

Motion for Error

based because the judgment was pro-
nounced and the Defendant in error
still in was in the possession of the
premises. The Court of Common Pleas
determined that Smith must lose the
case and he is there in no worse situa-
tion than he would have been had he
brought and at the trial the title to which
is in question. There is another case
which is brought against a Sheriff for
an escape but before judgment a writ
of error is brought and the judg-
ment is reversed. Here the Sheriff stands
still liable and it will be asked
how he could not plead that the judg-
ment was reversed.

In the United States if a writ of Error
is brought to the Supreme Court of the
United States from the Circuit Court it
must necessarily issue from the Supreme
Court and be signed by the Clerk of the
same. It is issued from the Circuit Court

Signed

Judg. Sept.

Observations of Sir J. Jeffreys on the Act 16 & 17 Car. II. c. 8. in the case between Brown & Sept. 1791

signed by their Clerk [illegible] the Defendants Pro Tem [illegible] [illegible] Writ of Error to reverse a judg. "Court (in Superior Court of the [illegible] "and State) given before [illegible] [illegible] "only by the Clerk's Office of this Court" Upon this case as a precedent to the Question it will be a fair point to be by an erroneous judgment before it could be reversed. According to the statute regulating judicial writs "it will operate as a supersedeas and "stay Execution only when a copy of the "Writ of Error is lodged in the Clerk's "Office for the benefit of the complainant" within ten days after the rendering "of the judgment or obtaining of the "Writ of Error" [illegible] before the Superior Court of Georgia and the judgment is erroneous [illegible] taken by a Writ of Error the Plaintiff in Error [illegible] [illegible] to the Court

Stat. to regulate judicial writs.

L

Pleas and Pleadings

of Pavement and got a Writ of Error signed by the Judges of the Circuit Court of the United States — This inconvenience might be remedied by the Clerks of the several Circuit Courts of each State furnishing themselves gratis with blank Writs of Error ready drawn and signed by the Clerk of the Supreme Court and having them ready on Demand whenever wanted. This they might do, but as they are not compelled to do it, they put a premium upon the practice

Writs of Error

Chancery Pleadings

Section Cases explanatory the effects of an assignment or transfer of judgments on Writs of Error.

Case 1st. William Ford vs John Davis

In the Court below the Judgment in for William Ford against John Davis £18 Debt and £8 Costs, appeared on a suggestion below filed, that the said John Davis had assigned the said Judgment, and it did not appear that the Judgment was satisfied. John Davis recovered against William Ford £18 the amount of the Judgment recovered by John Davis against the plaintiff below. And for that cause the assignee by Ford the plaintiff in Error.

Case 2d. James Brent vs John Davis

James Brent sues out a Writ of Error against John Davis for a reversal of a Judgment of £18 Debt and £8 Costs, obtained against him below, and that Judgment was assigned by the defendant in the assignee, [illegible]

Costs which Government might have recovered on the Court below.

Power of Attorney

vs

William B. Allen

Judgment below in favor of Plaintiff on Defendant affirmed in this Court.

Brief of Proof Examined

Mr. Justice

Have judgment above, that the judgment below be affirmed and that the Defendant in Proceedings recover his costs in the Court in Error. Whatever on the first judgment is also allowed of the Court in this direction, that Probert pay costs in action for accounting.

Thomas S. Aspinwall

vs

Samuel Fisher

The Judgment below was in favor of Aspinwall the Defendant below: Fisher by a Writ of Error reverses that Judgment: The Judgment in this case is merely a judgment of reversal, & the Court above is competent to try the question. Aspinwall on the Judgment of reversal enters the case in the Court above for trial and

IV.

final

Appeal of Real Employer

final judgment of the plaintiff recovers together with his Debt or Damages all his Costs which accrued before the judgment of reversal as well as those which have accrued since: But he recovers no costs in the Court in Error: If the plaintiff has paid the costs taxed against him in the judgment below he would have recovered them on the judgment in Debt in Error or Damages but defendant cannot enter the action of at all the venue in which a judgment of reversal is rendered.

Finney & Harrington

v.

Henry & Trustee

The Court which received the judgment in the last case was not constituted to try the question of fact in the Rel[illegible]

[illegible]

[illegible]

given by the Court is Estopped: the Defendant in the original action [illegible] that he can not plead the same Defence, on which [illegible] judgment, costs and damages were assessed on such a plea: So in Comm. Pleas. — Writ of Error Exemplified

Heary & Wary vs Harvey James — Demurrer in the Court [illegible] to the Declaration; the Declaration is adjudged good: on a Writ of Error the Judgment is reversed, [illegible] the Declaration is determined to be sufficient, and the Defendant [illegible] to it on a new trial. VI.

[illegible] vs James [illegible] — The Declaration in a Court below is adjudged insufficient: Reversed on Writ of Error: here [illegible] the [illegible] Declaration [illegible] the [illegible] tried. See VII.

[illegible]

Pleas in Pleading

Doig & Jones vs Hamilton

Plea of the Court above have only towards a judgment of reversal and not a judgment for plaintiff to recover: and the Court above must on the judgment of reversal ascertain the damages.

Hamilton & Smith Plea in Bar: demurrer to

VIII. vs Isaac Fisher | in the Court below and adjudged sufficient judgment reversed: Smith enters for trial: for aught there is no judgment for Smith to recover and on the face of the Record he has a right of recovery.

Hubbard Taylor & Plea in Bar adjudged

IX. vs | insufficient in the Court

Charles S. Smith | below: judgment reversed: Taylor & Hubbard enter it: with the [illegible] for the object is to reverse and there is no judgment against him.

Sarah Scheldinger Plea in abatement

X vs | judgment below the

Charles & Clay | that state: judgment reversed

Pleas and Pleading

[illegible] [illegible] [illegible] may be [illegible] for the [illegible], a [illegible] Writ.

Writs of Error [illegible]

Diversi [illegible] | Plea in [illegible] in the last case: for [illegible] Plaintiff | [illegible] [illegible] [illegible] [illegible] in the [illegible] [illegible] reversed in the Court of Error. Expense not once for the [illegible] the Writ.

II

[illegible] [illegible] | if [illegible] be [illegible] it be [illegible] or [illegible] in the Plaintiff | [illegible] [illegible] the Plaintiff [illegible] may enter for trial in [illegible] whether he is in error or not and whether the judgment be for or against him. [illegible] Digest [illegible] if [illegible] [illegible] [illegible] the judgment [illegible] [illegible] [illegible] for the [illegible] is Plaintiff in Error and the judgment in error is in his favor: the Defendant [illegible] [illegible] [illegible] [illegible] [illegible] judgment [illegible]. [illegible] [illegible] Plaintiff in ~~[illegible]~~ Error and the judgm^t

XV

Judgment Errony

Writ of Error Compared

[illegible] Judgment [illegible]
[illegible] for [illegible] the
[illegible] purpose the power of
[illegible] of the [illegible] of Winchester
Westminster &c: in the beginning
every where the original Plaintiff is
supposed to enter for trial on a reversal
of judgment the Court above is supposed
to be competent to try the issue of fact:
if this proves not to be the case then
the record is remanded to the Court below
and then the final trial is had:
When the judgment in Error puts an end
to the litigation between the parties, the
Cause is never entered into the Court below
nor remanded. The litigation is always
ended when the judgment is affirmed.
But it is otherwise in a reversal of that
judgment unless the judgment of Error
lies against the original Plaintiff:
in which case in this case if the judgment
reversed must be a judgment upon the

Vide IV and V Coke cited ante

illegal

Plea and Pleadings

illegal admission or rejection of evidence: Grounds of New Trial

The Litigation is not of course ended:

and the original plaintiff may still

enter on the trial if he prevail:

Pleas and Pleading

Bills of Exceptions

A Bill of Exception is a statement of facts, and of some interlocutory judgment founded on them, annexed to the Record, for the purpose of laying a foundation for a Writ of Error. 1 Lecture

The statement consists of facts, not originally appearing on the Record, but which are the foundation of some interlocutory judgment, which the party against whom the judgment was pronounced supposes to be erroneous. 1 Bac 305. 4 Bac 156 3 Bol. 379 Plow. 56

It is called a "Bill of Exceptions" because it contains exceptions to the interlocutory judgment. This mode of proceeding was unknown to the Common Law and was introduced by the Statute of Westminster 2d. A Bill of Exceptions being to lay a foundation for a Writ of Error can not be taken except in a Court of Record. 1 Chit. 640 1 Saund 277 Gilbert 115

Bills of Exceptions

which Court lies: & it can not in a court of record, as the Court of Chancery in England. Nor can it be filed between Commissioners or an interested State in Court. Mr Powell thinks it can't in Court in a Court of Probate for every

Dig. p. 58.

judgment pronounced determination made or order of this Court, may be appealed from to the Ecclesiastical Court

If a party offer to present to evidence

Dan. 305 1 Saund. 5 Ed. 2 Ca. 5 Ed. 2 Ca.

and the overruled by the Court, he may file a Bill of Exceptions: So in England for an intervention by the Judge.

If evidence offered be objected to be admitted or rejected a Bill of exceptions may

1 Bac. 305 4 Bac. 305 9 Co. 81 Co. Lit. 283 2 Bac. 257 Bull. 315 Ld. Raym. 745

be taken. This is also a good ground for a new trial. But if the Judge admit the party's evidence a Bill of Exceptions can't be taken because the Judge directed the jury how to find a verdict. Again filed in favour of a person which was

1 Saund. 6 Co. 291

allowed evidence on the subject to which

Sign and Pleadings

in dispute if upon an instrument be
signed there in the presence of the par-
ty it might be ordered: & indeed
when in the presence of the party it ought
to be ordered, a Rule of Practice may
be taken: So in case of withdrawing or
withholding the challenge of juror. But in
case interlocutory judgment is to be
issue matter of practice. Rule of
opinion with leave be allowed: Eg.
Contingent fees: a case: a judgment
a fact to plead: or moving on behalf
to order peal bond for legislation of
in order a recital of said bond by
contingency with the Court a Rule
of Practice can not be taken. Eg.
the case that part of a bond conditions
such bond terms or granting bond &c
of the case is not specified.
If a Rule be made by the Court
then by one they must insist in it
a Rule of Practice, and comp
pounds

Rule of Practice

7th Rep. 48.
1 Ba. 325
2 Ba. 427
Cyp. 231

Gilb. Ev.
1 Sim. 327

Bills of Exchange

A Bill of Exchange has the powers and is subject to every one, which a Bill of Exchange illustrate the rule last mentioned. Exchequer in Bank on Land Land is granted by a Bill after fraud the proceeding being commenced in Bill just be filed: and the Bill may be filed in all Courts where judgments are liable to be recovered by a Writ of Error. In the Court Bench Exchequer Chamber have practised whether it can be filed in the King's Bench, the plaintiff being Denizen Aliens: (Pl. Dawson) Which the latter opinion is the rule and Bills of Exchange are not allowed in Indebitatus for Money or Money for the Judges are Land considered as the Land of the Plaintiff and Property per that Property is Land Land. This is an extra [illegible] Bills and Notes are Land in Indebitatus [illegible] of the Commission of Goods

Conway Rep. 5 5. 3 Lev 285. 6 Mod 97 287

Lev 205 Lev 658 Ld Raym 220 Salk 128

that

Blood and Bleeding

[illegible] Bleeding

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Clear and Decisive

Of Good Conscience.

The rule is sometimes disposed with in the Court of Kings Bench by the Judges of the Court to grant a Judgment of Nonsuit, if it be regularly and allowed with respect to the general merits of the cause, to draw the rules a strongly into a question, examination of the Witnesses under oath, and certainly a general statement of the facts and circumstances is regularly

Of Facts Contrary

If the Facts below adduce the Facts above will alter the Law of Land.

Rec. 20. Hartman Lib. 9. Cont. 1.

It will be authenticated in England by Separation of the Judges or other Judges below in the Court above and of Knowledge. The Case is in consequent to other cases and the intention has prevailed and the Evidence which it is found that allowed the general in the Minutes and the general rule of the Case =

Clear and Concise Pleadings

~~Bill~~ Every Bill of Exceptions should contain a statement of the ultimate controlling facts, and of the facts on which the judgment was founded.

Bill of Exceptions

If the statement is not correct the Judge or Judge may not be called to rectify it.

Rule 30 Circ. Ct.

But if it is correct and the Judge or Judges refuse to sign it, a writ of error will lie to the decision of the Court overruling it if it be proper. The Bill must be tendered in at least the substance of it proved to exist at the trial.

Exceptions must be in writing. Sup. Ct. App. Rule 10. Circ. Ct. Rule 30.

A Bill of Exceptions is not a Surplusage but must merely contain the facts of the case upon which the judgment was founded.

Rule 30 Circ. Ct. Sup. Ct. App. Rule 10.

Litchfield County ss.

Bill of Exceptions.

Litchfield (Th. Ann) Petition of.

Vs.

Plaintiff.

Defendant.

The Plaintiff in the above Petition, offers the following Bill of Exceptions to the decision of the Court in the trial of said case.

Bill of Revivor

as a witness — and the Defendant Objected to his testimony on the ground that Nicholson was interested in the suit, for that he had State the agreement but the Court notwithstanding admitted him to testify. Whereupon he testified: and thereupon the Plaintiff excepts to the decision of said Court and prays that this Bill may become a part of the record.

This bill the foundation for the writ of Error. In England it is no part of the record in the Court below.

1 Cont. and Bul. 28.

[illegible]

Difference

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]dence

of justice. The party whose interest is [illegible] to be prejudiced by the witness [illegible] the other [illegible] against him is entitled [illegible] [illegible] which the [illegible] [illegible] [illegible] is a good [illegible] to [illegible] the truth [illegible] persons may [illegible] [illegible] [illegible] which invalidates the credibility of character [illegible]

[illegible]

[illegible] by showing his general character to be [illegible] [illegible] of his having taken [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] general [illegible] [illegible] of the party [illegible]

the

[illegible]

[illegible]

[illegible]

[illegible]

Pardons.

[illegible] will be necessary to restitute the [illegible]
Witness for [illegible] the [illegible] [illegible]
before the "offence," and the "punish-
ment." Some [illegible] to render a man [illegible]
[illegible] incompetent, he must have been
convicted and to show his conviction [illegible]
you must produce the record because [illegible]
by this that evidences the nature of the
crime committed. [illegible] never can be † Decided in a late case 8. East. 77.
[illegible] to be proved [illegible]
[illegible] but you may ask the witness† if
he has not been convicted [illegible]
[illegible] not [illegible] because altho'
it criminates him it cannot put him [illegible]
in danger. [illegible] because he has [illegible]
suffered [illegible] of [illegible].
The incompetency of the witness [illegible]
[illegible] may be removed [illegible]
[illegible] by a pardon and since
by reversal of judgment [illegible]
the incompetency is a result of the —
punishment. the infamy [illegible]

*5 Eliz. C. 4.

Statute of Kentland & Attorney Genl. Decr. Sept 1819. Recog. Witness

Evidence

the Plaintiff or for some one
else through left out of the Trustees
bill or bill not for the sixty
pounds it was called as a Witness for
I believe I was an Referee for
some of my children to receive their
out by letting a Letter Carrier
to have it paid to them.

Q. Did you or other persons
always received Income they received
in the form of an order for money
the Trustees and Trustees Keep
into Bank in a Building Lot
Lend or Loan to Strangers

Q. Did you or other persons
they are always consider of the
Direct by what they believe and the
Direct of their other always be
[illegible] the [illegible]
[illegible] [illegible]
accountability [illegible]
[illegible] All who believe Death, are the

Q. Persons
[illegible]
[illegible]
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] a [illegible] or [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], where the [illegible] [illegible] in the [illegible] [illegible] [illegible] may be used in any [illegible] in another sense to which [illegible] [illegible]. This is the only [illegible] which [illegible] at least in [illegible] [illegible] the [illegible] the [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] a certain [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] literation with the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] question and [illegible] to its credibility. The [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

3 Mich. 518.

[illegible]

[illegible]

[illegible]

Evidence

[illegible]

[illegible]

[illegible]

[illegible]

The

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

have

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

"Facts, which raise "presumption"

[illegible]

Extract

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Feb. 28.

[illegible] Feb. 1868.

[illegible] 1867
[illegible]
1868

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Page 18.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

the Object of [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] of the facts stated in the Bill are
[illegible] [illegible] of the [illegible] [illegible]
[illegible] [illegible] the Defendant. [illegible]
[illegible] of Discovery [illegible] [illegible] that it
[illegible] answer. [illegible] the Bill [illegible]
[illegible] yet the answer [illegible] [illegible]
[illegible] evidence against [illegible]
[illegible] [illegible] [illegible] that you will [illegible]
[illegible] that [illegible] [illegible] only [illegible] there
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] the answer of
[illegible] Defendant [illegible] [illegible] read
against [illegible] [illegible] the answer of a [illegible]
[illegible] against the Testimony [illegible] [illegible]
[illegible] [illegible] entertained [illegible] [illegible]
[illegible] should be [illegible] [illegible] answer
[illegible] [illegible] [illegible] whether
the Wife should [illegible] [illegible] [illegible]
[illegible] or not the [illegible] Lord Chancellor said [illegible]
[illegible] [illegible] [illegible] [illegible]

answer

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(Cont.) Rights of Soldiers

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1st That it is a [illegible] Chancery [illegible]

[illegible]

[illegible]

[

of relief is different. 5thly that it has a peculiar jurisdiction over frauds, accident and trust. Every species of fraud is in some manner remedied in a Court of Law. Because frauds are usually relieved in Chancery it by no means follows that the Court has exclusive jurisdiction: The reason why Chancery interferes generally in frauds is because the [illegible] of [illegible] [illegible] [illegible] than in Court of Law and the relief given is [illegible] [illegible] accidents [illegible] Court of Law cannot give relief but [illegible] in a different way. There are some frauds [illegible] a Court of Law has peculiar jurisdiction [illegible] [illegible] [illegible] [illegible] Chancery [illegible] [illegible] And 6thly because Chancery [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] have a [illegible] of

Com. Dig. [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Power of Commissioners

[illegible]

[illegible]

[illegible]

Powers of Chancery

[illegible]

[illegible] with an

[illegible] particularly [illegible] (Ch. Dig)

[illegible] with a [illegible] of

[illegible] by the law. There is no reason in this

place of the general description of the powers of Chancery. Blackstone has given the best description of their powers, viz. that the principal difference between these Courts and a Court of law consists in the mode of administering justice i.e. of giving effect to the same principles and they consist in three particulars: viz. the mode of proof, of trial, and of relief.

1st As to the mode of proof. In this particular the Chancery has greatly the ad-

vantage

[illegible]

[illegible] hand of [illegible].
[illegible]
[illegible] Which [illegible]
[illegible] and the [illegible]
[illegible] a [illegible] of [illegible] [illegible]
[illegible] a [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] the [illegible]
[illegible] the [illegible] 38 [illegible]
[illegible]
[illegible]
[illegible] of the [illegible]
[illegible] is called
[illegible] the
[illegible]
[illegible] the [illegible]
[illegible]
[illegible]
[illegible]

a right &c has jurisdiction in matters of Trust administration, administration of Legacies, Settlements &c. It is generally known: where Trials and Decisions are given and the judgment, which these have with the binding force of Law: Obs. 4. to the mode of trial these in Chancery in England are by interrogatories posted in the Court by the Counsel and afterwards by the Court from which depositions are taken out of the Court and then read in the Court: the Court evidence in Chancery is the same as in Law in use. The mode of trial in England is useful in some cases as where the witness is very aged or about to leave the Realm; here Chancery will order the Deposition to be taken provisionally these Depositions are called De bene esse which Depositions are taken by a Commission granted to particular tests

many

Copy of Observations

From Opposition they taken

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] by the [illegible] of the [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Treaty of Ghent.

[illegible]

[illegible]

[illegible]

[illegible]

interfere in the case of beams of light [illegible]

[illegible] and the [illegible] of the interference [illegible]

7 Lecture [illegible]

From the rule [illegible]

[illegible]

[illegible]

[illegible] of [illegible]

but there seems to be some difference
of [illegible]; if the husband is [illegible]
[illegible] at the time of the contract [illegible]
to settle lands and [illegible] [illegible] on the
wife, this is breach of [illegible]. So if there is
[illegible] [illegible] [illegible] this is a breach of
[illegible]. So if the contract is to settle the
[illegible] [illegible] [illegible] of the husband,
[illegible] on the [illegible] [illegible] to be
[illegible]. But [illegible] the contract
[illegible] long [illegible] [illegible] to [illegible]
[illegible] the binding on the husband and
his [illegible]. [illegible] that the
[illegible] of [illegible] [illegible] to the sub-
stantial object of all contracts, and
gives effect to the contract [illegible]
[illegible] the [illegible]. [illegible] without
[illegible] to the particular terms of
the contract. [illegible] bond is given to
[illegible] the consequences of [illegible]
[illegible] [illegible] the consequences
of [illegible]. [illegible] it [illegible] the [illegible]

3 [illegible] 80
[illegible]
[illegible] 7

[illegible] 135
[illegible]
[illegible]

Power of Attorney

in an Executory agreement to convey
Land where the Penalty is in the
hand of third Damages Claimed
will leave the Land to his Power of at
Law. A man of law or Prudence by letting
for the whole time an Engage
ment of the land and giving Security
his agreement the Obligee is the
second of the Obligee by Power in
Deed is done until time and instrument
time to the at the Obligee for
Blandina that the Obligee is Paid: In
a Court of Law the Opinion
would be right by reason and to and is
a Damage Giving liability on the land
to either of them: Claiming will Pay
Part a bale in favor of Dim who is
Paid the whole against the then the
Revision and Instead of being Ob
ligee in the Power against the whole
by Security Claimed will not only
and are Represented by Power the
other

Powers v. Blanchard

other party has a pleading jurisdiction, but in this form that tribunal will exercise it to do justice between the parties: In this Chancery is bound to enforce the agreement contained in a bond, between the landlord on one hand, as they relate upon the general law of review filed contracts in the one case that the plaintiff may have and in the other that defendant may have: In general there is no necessity of appeal to Chancery but in such cases rendering the jurisdiction of this court is entirely for convenience and in cases where the jurisdiction of the Court of Chancery is concurrent with the Supreme Court it seems that the jurisdiction must be there:

It is argued here that the jurisdiction of Chancery extends to all cases where the object of the bill is to obtain a decree and within the jurisdiction of that court, for the court is a court of general jurisdiction in equity:

Dev. 371. 374
3 Ired. 425
8 Leo 166.
3 Bur. 701.
2 Ward. 164

Cat. 315.

They

[illegible]

The [illegible] of Chancery is [illegible] from the
[illegible] that wherever the sub-
ject is [illegible] within the local
limits of its jurisdiction [illegible] of
[illegible]. It [illegible]
[illegible] of every case [illegible] of
[illegible]: but [illegible]
ply that this Court will [illegible] in
[illegible] of [illegible]. Yet the
meaning of the [illegible] is this
that when the parties are [illegible]
of [illegible] so as to require the
interference of the [illegible] the Court
will [illegible] if the par-
ties be [illegible] and the subject must
be of the [illegible] such as is within
in the jurisdiction of the Court. E.g.
[illegible] covenant to convey land
[illegible] in England and then Chancery
[illegible] the interference of Chan-
cery is [illegible] to compel a specific
performance. The subject matter

Powers of Congress

is within the jurisdiction of Congress and it does seem to me that an Act of Congress is equally obligatory upon the United States Courts as any other Act of Congress. Upon what ground can it be said that a Territorial Court is not a Court of the United States? Upon what ground can it be said that a Territorial Court is not a Court of the United States when either the judges or the jurisdiction and either the jurisdiction of the Court or the subject matter are in question? Moreover, it was argued that Congress could not act in person: that it could not legislate upon its own powers: that it could not act in personam because it could issue process and compel obedience to its orders in regard to men and chattels. But now the distinction between a Court in personam and in rem is overruled, it is settled that Congress can legislate upon its own powers by an Act in rem: by issuing a

process

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Powers of the Receiver

must be recovered at law, to be tried
by them in a court of equity in order
obtained but the vehicle is insufficient in
law by reason of demand patent charge
by which power a specific performance
All the cases before mentioned go to prove
this point. E.g. in Infant cases the courts
are agreement to convey: on the other
hand where the agreement is insufficient
law and cannot by reason of the [illegible]
[illegible] of consents as provided for by the
Agreement? Bloomsbury cases given to be
[illegible] E.g. the Bloomsbury agreement to let
the [illegible] Bill Court cases on the [illegible]
of his Brother and his coming into possession
possession. Now he never has come into possession
possession and Bloomsbury will not enforce
the agreement. General Rule at Court
of Bloomsbury will not enforce where an
[illegible] plaintiff can be had at law. In this
[illegible] They will not decree an
specific performance [illegible]

[illegible]

Covenant. Chancery

Alleging & stating in a bill in Chancery that adequate relief cannot be had in law. If this averment is not made the bill is demurrable. And the general rule is, that Chancery will not decree a specific performance of a contract concerning personal chattels, for the damages given in a court of law are considered an adequate remedy: and damages are given as equivalent

1 Ves 279. [illegible] by the convenience of the Chancellor. In all Contracts respecting personalty [illegible] the necessity to go into Chancery: this rule cannot be reversible or qualified by the particular circumstances of each case: and modified by this general exception: that where the nature of justice plainly requires a specific performance Chancery will decree it though it relate merely to personal property: the presumption in the case of personal property is that damages are

[illegible]

Parties of Blackburn

an adjacent railway had been dis-
continued owing to its failure. The
[illegible] contended that [illegible]
[illegible] from the [illegible] which [illegible]
[illegible] performance by third persons of different
trades, by [illegible] Blackburn [illegible]
a specific performance because [illegible]
[illegible] There is an exception
[illegible] by the rules where fraud is mixed
with the damages. In this case Blackburn
had also done specific performance, al-
though it respect personal property. Eth
[illegible] [illegible] against Blackburn
[illegible] of warranty. Either on the
[illegible] against Blackburn on the
ground that the [illegible] was, [illegible]
[illegible] [illegible] brought [illegible]
[illegible] [illegible] Blackburn [illegible] if there
is no fraud. It has been held that [illegible]
[illegible] [illegible] interference [illegible]
[illegible] [illegible] that

Ball 1383
Hom. 87.
201
Eq. Gen.
[illegible] 3.
[illegible]

Ã Lecture

Ibid. [illegible]
[illegible]

[illegible] a Pile [illegible] [illegible] [illegible]

Covenants & Agreements

A covenant or an agreement to entitle the party to a specific performance in Chancery must be specific and particular. It is not sufficient in general or general to convey lands without saying what lands will not be specifically enforced in Chancery. By a general phrase, that he will convey the specific performance of a contract must prove that he is fully ready and willing to have performed his part: or in other words he who asks Equity must do Equity. In Chancery not only the first part or performance of Bargains is covenants but also subsequent instruments of law are necessary to be performed to secure an Equity in the Grant. In Conditional Covenants only such as are to be performed. The covenants to convey land & an covenants to [illegible] Act of Law & [illegible] or [illegible]

Ante 359. post 450.

[illegible]

[illegible]

[illegible]

[illegible]

Canon of Evidence

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Power of Discount

[illegible]

[illegible]

[illegible]

1 Jarm. 275
9 Ch. App. 54
2 Ch. App. 919
1 Jarm. 224
2 Atk. 181

of an agreement to pay money
produced to be without consideration
or if it is intended to be a mere fo-
rbearance it may be de-
clared or explained by parol evidence
shewing for the forbearance the money
that has been waived his right but the
plaintiff has only to be relieved from
forfeiture. Lord was asked to
affirm to that it is the longstanding
rule that a mortgagee bound relieving
against fraud, forbearance or so the
mortgagee waiving as was deemed
to have acquiescence in time. He was
unable to apply certainly upon the
plaintiff's evidence to the point fore-
ply at the time bonds and bar
were from a mortgagee to transfer his
property and to acknowledge that there
was other and that Chancery has
power particularly when grounds in
a general and not of the Court of

Law

who seeks relief has shown any such
remissness in performing his part he can
generally obtain no decree from Chance-
ry: especially if the circumstances are
altered so that the other party is injur-
ed. The rule as laid down in Sedgwick 3 Ves. 378
is, if he has trifled with the performance [illegible]
of his part [illegible] [illegible] [illegible]
[illegible] in the Chancellor [illegible] with respect to
the necessity of the Plaintiff's performing
his part till he [illegible] a decree
against the other party. There is a con-
[illegible] [illegible] [illegible] marriage settle-
ment agreements and all others [illegible]
the ground [illegible] that the Plaintiff per-
forms his part in its equivalent [illegible] [illegible]
[illegible] of marriage settlement agreement
[illegible] [illegible] are generally purchasers of the
[illegible] and in their favor Chancery will
[illegible] [illegible] part to perform [illegible] that
the other [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Performance of [illegible]

renders a complete performance im-
possible [illegible] [illegible] [illegible] for
the performance of the party required
[illegible] can be done consistently with
the Statute. Thus where a lease was
[illegible] for [illegible] for forty years
[illegible] a Statute was afterwards made
which rendered it impossible for him
to [illegible] a lease for more than twenty years:
[illegible] [illegible] a specific performance
of the contract [illegible] for [illegible] years: this
[illegible] is called enlarging the time on
[illegible]. In a Court of Law this never could
be done. If the party had sued at Law for
a non performance it would have
been a good defence to have pleaded that
a performance was now unlawful: &
as a Court of Law can not apportion [illegible]
[illegible] it must have given judgment
for the Defendant. The same rule holds
[illegible] where a complete performance is
rendered impossible by inevitable acci-

dent

2 Bl. [illegible]
[illegible] 339.
2 [illegible] 3[illegible]
1 [illegible]
[illegible]

[illegible] 48.
[illegible] 284
[illegible]
[illegible] 328
3 Bl. [illegible]
[illegible] 384

only the rent & tenant covenant to convey to B. & your Lordship can do so the grant is actually made a valid Claim are cut off & can have Chancery to a Bill filed for that purpose will compel A. to convey the legal and equitable estate pending a Decree by proportion to the great Increase: The Doctrine of Equity is Discharged at Law where the Court of Law is concerned:

2 Bl. C. 131. 2 P.W. 234 2 Bl. 681 Mos. 347 Ch. 350.

Where they are executing Chancery will enforce them, but where they are executed a Court of Law will come there to Relief: This Brought Formerly Doubted is now settled. Leg of A. enjoyed B. in Equity entitled Lands taken B's wife with Remainder after her Death in Tail: and the Heir Claimed immediately and the Party entitled claimed Chancery Equity & Law the Difference it would be a great Injustice if Law & Equity

Cas. t. Talb. 28.

they

[illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Powers of Attorney

heirs of his body (But in the latter case since there was only an agreement to convey [illegible] both [illegible] for life only the words of the limitation to him & the husband received the words 'heirs of the body' were considered as words of limitation [illegible] describing the heirs or [illegible] of [illegible] the intention of the [illegible] was [illegible] the [illegible] to convey an [illegible] [illegible] to which the [illegible] [illegible] without using the words 'heirs of the body'. But in the case of the [illegible] [illegible] the intention of the Grantor was to [illegible] [illegible] the [illegible] but if they were to [illegible] the [illegible] [illegible] in the [illegible] in the [illegible] husband the [illegible] would be [illegible] and the effect [illegible] not be defeated [illegible]. But there is a [illegible] difference in effect between the construction of these words in a [illegible] [illegible] and [illegible] [illegible] they [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Transcript of Discovery

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Course of Lectures

[illegible]

[illegible] Ventricles.

Forms of Efficacy

Commonwealth of Pennsylvania

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Power of Blood

[illegible]

[illegible] of [illegible] [illegible] [illegible]

Powers of the Society

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Powers of Chancery.

Injunctions are issued in a variety of
cases. The most usual writ of injunction
is that which is issued against a Plain-
tiff to stay proceedings in some suit at
law when the defendant has Equitable
grounds of [illegible] which courts of
law [illegible]. Then the Defendant in
[illegible] at law [illegible]
[illegible] Chancery [illegible]
[illegible] proceedings [illegible]
[illegible] the [illegible]
[illegible]
[illegible] Chancery [illegible]
[illegible] injunction [illegible]
proceedings at law [illegible]
[illegible] proceedings [illegible] 1 Mad. 10
[illegible] 3 Bl. 177.
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

[illegible]

Opinion of Chief Justice

[illegible]

[illegible]

Power of Revenue

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Br. Sec.
Sess. 200.

[illegible]

[illegible]

Proceedings of Chancery

[illegible]

[illegible]

[illegible]

Reeve
and
Goulds
Lectures

W. Bond

III